

# ARBITRATION AWARD

CANADA

Date: November 24, 2025

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BEFORE **Me Francine Lamy**  
ARBITRATOR:

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**Unifor, various locals, Unifor Atlantic Communication Locals (Unifor ACL)**

Hereinafter referred to as "Union"

And

**Bell Canada (including Bell West and Bell MTS),  
Bell Technical Solutions Inc. (BTS),  
Télébec S.E.C.,  
Expertech Network Builders Inc.,  
Notherntel, Limited Partnership**

Hereinafter referred together as "Bell or the Employers"

Grievances: Alexandre Gauthier et al., Union and individuals as listed by parties –  
Vaccine mandate policy

Collective agreements: multiple

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ARBITRATION AWARD  
Section 57 of *the Canada Labour Code*

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## OVERVIEW

[1] In order to mitigate the risks arising from the COVID-19 pandemic, Bell Canada Enterprises Inc. (BCE) and its affiliated companies (“Bell” or “the Employers”) implemented a Mandatory Vaccination Policy (“MVP”) applying to approximately 45,000 employees holding a variety of positions across Canada.

[2] This policy is challenged by more than three hundred grievances, filed under collective agreements with one of the Employers within the group. These grievances, initiated by various Unifor locals or employees, were consolidated for arbitration. Although the estimate is not final, the proceedings concern over 400 individuals.

[3] Some employees did not comply with the vaccination requirement or did so belatedly. They were placed on unpaid leave for up to six months. Others claim that they were compelled to comply against their will to avoid that measure or a threatened termination of employment. However, no employee was dismissed.

[4] This award concerns the first phase of a three-part process. This initial phase addresses the common and representative issues drawn from selected grievances reflecting the broader questions regarding the reasonableness of the MVP and its implementation. Subsequent phases will, if necessary, address individual exemption requests under the *Canadian Human Rights Act*<sup>1</sup> (“CHRA”), the effect of individual agreements reached during the pandemic, outstanding issues, and damages.

[5] The first phase, focused on the reasonableness of the MVP and its application, required more than twenty hearing days. Hundreds of documents were filed, and testimony was heard from two expert witnesses, several employees and managers, and one BCE executive.

[6] The Union contends that the MVP is unreasonable. In its view, Employers disregarded less intrusive means to the privacy rights of employees refusing vaccination. The policy was applied rigidly, without considering workplace realities or the reduced effectiveness of vaccines against the Omicron variant, dominant in 2022. The unpaid leaves were, in substance, arbitrary disciplinary suspensions. Bell also acted abusively by suspending employees who worked remotely or outdoors.

[7] Employers responded that they breached neither the collective agreements nor the law. In their view, the MVP was reasonable in the extraordinary circumstances of the global COVID-19 pandemic. Bell complied with the expectations of the federal government and followed the recommendations of Canadian public health authorities. The MVP is in line with arbitral consensus and respects employees’ fundamental rights. Its uniform application was necessary for its validity, and the unpaid leaves were reasonable administrative measures in the circumstances.

[8] For the following reasons, I find that the MVP was reasonable for the duration of its application, up to the end of June 2022. Employers were not required to alter employees’ working conditions to shield them from the policy’s consequences. The unpaid leaves were

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<sup>1</sup> *Canadian Human Rights Act*, R.S.C.1985, c. H-6.

administrative in nature. However, it was unreasonable to place employees working remotely on administrative leave prior to any requirement that they return to the workplace.

[9] Finally, the evidence is insufficient to reach a finding on natural immunity, or the reasonableness of the fourteen-day delay imposed following vaccination. Those matters are therefore referred to a subsequent phase for adjudication, and the Tribunal remains seized of all unresolved issues and pending grievances.

## **BACKGROUND**

### ***A) The COVID-19 pandemic and mandatory vaccination in Canadian workplaces***

[10] The global COVID-19 pandemic, caused by the SARS-CoV-2 virus, was declared in March 2020 by the World Health Organization (WHO). The virus's highly contagious and unpredictable nature shaped the evolution of the crisis. Governments imposed extensive restrictions under declared public health emergencies to address it.

[11] The risks associated with COVID-19 infection varied. The disease could cause mild symptoms but also severe complications requiring hospitalization or intensive care and could be fatal even among healthy individuals. "Long COVID," defined by symptoms persisting for more than four weeks after infection, is often disabling, with a reported prevalence between 5% and 30%. The pandemic's significant impact on the Canadian health-care system was a major source of concern.

[12] The telecommunications services provided by Bell and its subsidiaries were designated as "essential" from the onset of the nationwide state of emergency. A letter dated October 1, 2020, from Innovation, Science and Economic Development Canada (ISED) confirmed that information and communications technologies were among the ten critical infrastructure sectors in Canada during the crisis. ISED sought Bell's cooperation to ensure continuity of its services.

[13] Ms. Jennifer Palov, Vice-President of Total Rewards and HR Services at BCE in 2021 and 2022, testified for Bell and Employers on the justification and implementation of the MVP. The executive committee established to monitor the pandemic's evolution, which included the presidents of the subsidiaries, relied primarily on information from the Public Health Agency of Canada (PHAC) and the federal government when making decisions. The committee occasionally sought the advice of a physician employed by the company.

[14] The communications underlying the contested decisions are filed in the record, with links providing access to related information. In addition, the recommendations and measures issued by public health agencies and governments across Canada are matters of public notoriety of which tribunals may take judicial notice—that is, recognized without the need for formal proof<sup>2</sup>. This overview is supplemented by the experts retained by the parties, who comment on the risks associated with COVID-19 and its variants, the modes of transmission, the means of reducing these risks, and their effectiveness.

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<sup>2</sup> *Parmar v. Tribe Management Inc.*, 2022 BCSC 1675, par. 108-110; *Bailey v New Brunswick Power Corporation*, 2023 CanLII 2832 (NB LA) (Michel Doucet), par. 78.

[15] Employers quickly adapted their operations to comply with government directives and to protect employees and clients alike. Numerous protocols were introduced: widespread remote work, restricted access to facilities except if necessary, physical distancing, mandatory mask use, virtual meetings, and symptom reporting, among others.

[16] The first vaccines became available in Canada in December 2020 and were gradually administered thereafter. Public uptake led to sufficient improvement to allow a partial reopening of the economy by the summer of 2021. Booster campaigns followed, though the situation remained unstable.

[17] Beginning in the summer of 2021, federal and provincial governments began implementing mandatory vaccination as a condition to access certain workplaces or venues and participate in certain activities.

[18] On August 13, 2021, the federal government announced its intention to require full vaccination for public service employees, Crown corporations, and workers and passengers in federally regulated air, rail, and marine transportation sectors, with implementation in the fall. It also expected other federally regulated employers to adopt internal mandatory vaccination policies for their workforces. Bell fell squarely within this expectation, which was extended to suppliers and subcontractors entering federal facilities.

[19] Several provinces followed suit, adopting similar requirements for employees in health care, education, and public services. Public health authorities recommended that other employers likewise adopt vaccination mandates.

[20] This development, which also included Bell, prompted a wave of proceedings before various decision-making bodies and gave rise to the extensive case law relied on by the parties.

***B) Mandatory Vaccination Policy (MVP): objectives and general framework***

[21] On August 23, 2021, Bell responded to the federal government's expectations. It informed its employees of its intention to impose mandatory vaccination to comply with the federal directive and to protect the health and safety of all personnel and customers, consistent with the policies examined in previous cases.

[22] On September 1, 2021, the first version of the MVP was released. Bell affirmed its commitment to protecting the health of its employees, customers and the public, while ensuring the continuity of essential services. Vaccination was presented as the most effective measure to limit the spread of COVID-19 and reduce its consequences to enable a return to normal operations.

[23] Accordingly, the MVP required all team members to be fully vaccinated and to maintain adequate protection to visit Bell offices or worksites or interact in person with Bell customers—even occasionally.

[24] To be considered fully vaccinated, employees had to receive all doses of a Health Canada–approved vaccine, with a 14-day interval following the last one. Proof of vaccination was required, and Bell committed to protecting employees' privacy.

[25] In addition, Bell maintained or adjusted its health and safety protocols in accordance with federal and provincial public health directives.

[26] Finally, the policy was mandatory, and any failure to comply could result in disciplinary or administrative measures, including termination of employment.

***C) The Workways program: objectives and general framework***

[27] Developed in a separate policy but contemporaneously with the MVP as part of a coordinated approach, the Workways program sought to integrate the new reality of remote work into the company's operational practices. It was intended to be implemented once a normal return to Bell offices and facilities became possible. The MVP, for its part, aimed to ensure that the workplace would be safe when this mandatory return would take place.

[28] The Workways program defined three work profiles:

- Fully remote employee: minimum presence of two days per month in the office and participation in one monthly on-site meeting.
- Mobile profile: hybrid mode with a minimum presence of two days per week.
- Full-time on-site profile: primarily on-site work, with the possibility of up to two days of remote work per month.

[29] The program identified relevant factors for implementing flexible work arrangements, including business requirements, team dynamics, availability of tools and resources, and performance.

[30] In the weeks and months following its adoption, management teams at Bell and its subsidiaries assessed their business needs to assign employee profiles as part of the program's implementation.

***D) Implementation of the MVP and the Workways Program***

[31] After the launch of the MVP in September 2021, Bell began a first implementation phase focused on collecting employees' vaccination certificates until October 31. Reminders were sent to encourage employees to be vaccinated and to submit the official proof of vaccination issued by public health authorities.

[32] The second phase allowed fully compliant employees to return to the office on a voluntary basis.

[33] Employees who were not vaccinated were required to remain in remote work unless their presence on site was necessary, and they were prohibited from entering Bell offices. Bell required them to undergo two rapid tests per week if their duties involved on-site work or customer interaction. They were also required to complete mandatory training on vaccination.

[34] In December 2021, Bell announced the final stage of implementing the vaccination requirement in preparation for a mandatory return to the office on February 1, 2022. The rapid testing program would end, and all employees who were not fully vaccinated would

be placed on unpaid leave with the possibility of termination. A schedule was established for submitting the required proof of vaccination to avoid being placed on leave.

[35] In the meantime, the public health situation has deteriorated. The voluntary return to the office was suspended and, in January 2022, Bell postponed the mandatory return while maintaining its implementation plan. Thus, on February 1, 2022, employees whose vaccination status did not meet the MVP requirements were placed on unpaid leave until April 30. The notice advised that failure to comply could result in termination of employment without further notice or compensation.

[36] As conditions gradually improved afterward, Bell extended the unpaid leaves in April 2022 for an indefinite period, while maintaining vaccination as a condition for reinstatement.

[37] On June 29, 2022, Bell announced the suspension of the MVP, following the federal government's decision to lift the vaccination requirement for federal public servants and federally regulated employers. The next day, employees on unpaid leave were invited to return to work. According to the evidence, this process generally proceeded respectfully, although some employees reported having lost files or their previous assignments.

## **ANALYSIS AND DECISION**

### **1. Legal Framework for the assessment of a mandatory vaccination policy**

#### **1.1 KVP criteria for the validity of employer policies**

[38] The scope of managerial rights to impose a unilateral policy is determined by two core principles: compliance with collective agreement and reasonableness.

[39] The criteria established in the landmark *KVP*<sup>3</sup> decision define the analytical framework for the validity of any employer policy adopted unilaterally and without the union's consent. Thus:

- The policy must comply with the collective agreement.
- It must not be unreasonable.
- The policy must be clear and unequivocal.
- Employees must be notified of the policy before it is applied.
- Employees must be informed that a violation may result in discharge if the rule is used as a basis for discipline.
- The rule must be applied consistently by the employer since its introduction.

[40] Despite being formulated more than half a century ago, these criteria remain the foundation for arbitral review of employer policies. They continue to guide the assessment of mandatory vaccination policies adopted during the COVID-19 pandemic.

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<sup>3</sup> *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd.*, 1965 CanLII 1009 (ON LA).

### **1.1.1 The MVP is a unilateral policy not endorsed by the Union**

[41] Bell raises an argument concerning the Union's conduct. Without disputing the application of the *KVP* criteria, it maintains that Unifor endorsed its approach. It relies on a September 2, 2021, public statement issued by Unifor, as well as national training sessions advocating mandatory workplace vaccination policies as protective measures for workers heavily affected by the crisis. Bell argues that this position substantiates the reasonableness of its policy, a conclusion the Union disputes.

[42] In my view, these communications have no bearing on the outcome of the dispute. The MVP remains a unilateral decision of Bell, and the evidence does not establish an endorsement, since the certified locals grieved the MVP repeatedly.

[43] Vice-President Palov, who played an active role in developing and implementing the MVP, testified that Bell acted without involving the Union. Management was aware of Unifor's statement. Although Bell welcomed the possibility of alignment, it nonetheless anticipated that the MVP would be challenged—which is precisely what occurred: more than 300 grievances were filed and referred to arbitration.

[44] The apparent inconsistency in the Union's position is explained by the fact that this national support was conditional upon the policies being reasonable. This is exactly what the local unions challenged in their grievances.

[45] Granted, Unifor's national leadership reiterated its position in June 2022 in a letter requesting that Bell withdraw the vaccine mandate following announcements by the federal government. This letter has no bearing on the outcome of the dispute. Although BCE's executive committee was informed of the Union's national position, the evidence does not support a finding that it influenced its decision to suspend the MVP.

[46] In short, the MVP is a unilateral policy not endorsed by the Union, and the *KVP* criteria therefore apply. Therefore, I must address its validity.

### **1.1.2 The KVP Criteria in Dispute**

[47] The MVP is generally clear<sup>4</sup>. The evidence shows that the policy was communicated to employees before its implementation and that they were informed of the consequences of refusing to comply, including the possibility of termination. Several collective agreements recognize, in similar terms, the employer's management rights and its obligation to implement practices and methods to protect health and safety, subject to a commitment to act reasonably. Where a violation is alleged, it arises from the alleged unreasonableness of the policy—bringing us back to the same *KVP* criterion at the core of the dispute.

[48] However, according to the Union, the broad scope and rigidity of the MVP undermine its reasonableness. Among other arguments, it submits that Bell and the Employers should have adjusted its application to the particular working conditions of certain positions, which, in my opinion, also raises concerns about consistency.

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<sup>4</sup> I reserve my decision on this issue with respect to the unresolved questions.

## **1.2. Framework for assessing the reasonableness of mandatory vaccination policies: balancing competing interests and proportionality**

[49] The assessment of the reasonableness of a mandatory vaccination policy as a health and safety measure is guided by the analytical framework approved by the Supreme Court of Canada in *Irving*<sup>5</sup>. It has, however, been adapted, as will be discussed later.

[50] The analytical framework developed in arbitral jurisprudence and adapted in individual rights cases provides a method for assessing the reasonableness of a health and safety policy. It requires balancing the competing interests of the employer and the employees affected. The risks the policy seeks to mitigate must be proportionate to the intrusions it may impose on employees' rights in order to support a finding of necessity. Relevant factors include the dangerousness of the work or workplace, the nature of the rights engaged, the impact of the measure on the affected employees, and the availability of less intrusive alternatives.

[51] A refusal based on a ground protected under human rights legislation—in this case, the *Canadian Human Rights Act*, which applies to federally regulated undertakings—is not subject to this balancing exercise because the right to equality takes precedence over the employer's management rights. The MVP clearly recognizes this exception and sets out the procedure for requesting an exemption from the vaccination requirement. As noted above, disputes relating to exemptions based on human rights grounds are not addressed in this phase of the arbitration process. It is, however, undisputed that the protection against discrimination provided by the Act does not apply to objections to vaccination based on personal preference, as such objections do not constitute a protected ground<sup>6</sup>.

### **1.2.1 Employees' Interests**

[52] Employees who testified stated that the MVP compelled them to be vaccinated against their will, amounting to an infringement of their physical integrity and personal liberty, as well as a significant intrusion upon their privacy. In their view, the choice of whether to be vaccinated falls within their personal autonomy. The interests at stake, therefore, concern employees who refused vaccination, and, according to the Union, those interests are all the more compelling because the right to bodily integrity is engaged.

[53] The prevailing arbitral view regarding the effect of mandatory vaccination policies is that they do not *force* employees to be vaccinated. Rather, the progressive economic and employment-related consequences of refusal operate as incentives to consent. Although there is no physical compulsion, such policies nonetheless impose a profoundly difficult choice that limits the personal autonomy of employees who object. It must also be recognized that disclosing one's vaccination status constitutes the collection of protected personal information.

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<sup>5</sup> *CUPE Local 30 v. Irving*, [2013] 2 S.C.R. 459.

<sup>6</sup> See, for example, *Bailey v New Brunswick Power Corporation*, *supra*, note 2, citing *Complainant Class of Persons v. John Horgan*, 2021 BCHRT120.

[54] The issue, therefore, is the balancing of the individual privacy rights of employees who refuse vaccination and the employer's divergent interests.

[55] The distinction between mandatory vaccination and forced vaccination is not merely theoretical. The provisions of Quebec's *Public Health Act*<sup>7</sup> are useful to understand what constitutes forced vaccination. That statute grants authority to the provincial government, upon recommendation of the public health director and after declaring a public health emergency, to order vaccination of a group or the entire population. The Court of Quebec may order an individual who refuses vaccination to submit to it and, where there are reasonable grounds to believe that the person will not comply, may even order that the individual be taken to a specific location to be vaccinated. That is forced vaccination.

[56] Under policies mandating vaccination as a condition of employment, employees retain the right to refuse the vaccine. If they refuse, the vaccine will not be administered to them. This distinction underlies numerous judgments and arbitral decisions concluding that employees subject to such policies have a choice<sup>8</sup> —albeit a very difficult one— and that the decision whether to be vaccinated remains theirs, based on their convictions and priorities. I share this view.

[57] The courts have generally held that mandatory vaccination policies do not violate the fundamental right to bodily integrity protected by section 7 of the *Canadian Charter of Rights and Freedoms*<sup>9</sup> (the Canadian Charter) and section 4 of the *Charter of Human Rights and Freedoms*<sup>10</sup> (the Quebec Charter). These provisions do nothing to protect employees from the economic consequences of their choice not to be vaccinated<sup>11</sup>. The prevailing view is that these policies restrict the privacy of employees who refuse vaccination.

[58] Section 5 of the Quebec Charter protects the right to privacy. Its applicability is disputed on the basis that Employers fall under federal jurisdiction<sup>12</sup>. However, I do not

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<sup>7</sup> *Public Health Act*, CQLR, c. S-2.2, sections 128, 123, 126.

<sup>8</sup> *National Organized Workers Union v. Sinai Health System*, 2022 ONCA 802 (CanLII), para. 38; *Coast Mountain Bus Co. and Unifor, Local 111 (Vaccination Policy)*, 2022 CarswellBC 2641, (Jacquie de Aguayo), paras. 75-77; *Parmar*, *supra*, note 2, paras. 122-125, 154-155; *Syndicat des travailleuses et travailleurs de MDA espace - CSN et Corporation MacDonald, Dettwiler et associés*, 2024 QCTA 129, [2024] no AZ-52014620, 2024 CanLII 23775 (QCCAT) (Johanne Cavé) (MDA), citing *Wojdan v. Canada (Attorney General)* (2021) CF 1341.

<sup>9</sup> *Canadian Charter of Rights and Freedoms in Canada Act, 1982 (UK)*, 1982, c. 11, Schedule B, Part I: *Toronto District School Board v. CUPE, Local 4400*, 2022 CanLII 22110, para. 18; *Bailey v New Brunswick Power Corporation*, *supra*, note 2; *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLR 47, para. 324. Contra: *Electrical Safety Authority v. Power Workers' Union*, 2022 CanLII 343 (John Stout), para. 64.

<sup>10</sup> *Charter of Human Rights and Freedoms*, CQLR, c. C-12.

<sup>11</sup> *Rehibi*, *supra*, note 9, para. 324; *MacDonald, Dettwiler and Associates Corporation*, *supra*, note 8, citing: *Syndicat des professionnelles en soins infirmiers et cardio-respiratoires de Rimouski* 2009 QCCS 2833; *Lavergne-Poitras v. Canada (Attorney General)*, 2021 FC 1232; *Wojdan v. Canada (Attorney General)* (2021) FC 1341.

<sup>12</sup> *Syndicat des employés de Vidéotron Itée v. Sylvestre*, 2014 QCCS 1557; *Teamsters, Local 931 v. Courrier Purolator Ltée*, 2001 CanLII 4678 (QC SAT) (Claude Foisy) (The arbitrator determines that the Quebec Charter does not apply. I note, however, that the provisions at issue related to the prohibition of discrimination — a subject also governed by the CHRA for federally regulated employers — which is not

consider it useful to decide on the applicability of the Quebec Charter. As the Union pointed out, the values of privacy and personal autonomy are already integrated into the KVP/Irving analytical framework<sup>13</sup>, as they are rooted in *common law*<sup>14</sup>. The grievances identified for this first phase of the process are deemed to be representative of all disputes raised across Canada; only some originate in Quebec, so applying the Quebec Charter would not resolve common issues. Moreover, in light of the jurisprudence, applying the Charter's justification framework<sup>15</sup> would likely lead to results similar<sup>16</sup> with those reached under the balancing analysis, albeit through a more stringent test.

[59] Accordingly, arbitrators applying the KVP/Irving framework have concluded that the psychological and economic pressure exerted by these policies amounts to a form of constraint,<sup>17</sup> or even coercion<sup>18</sup>, that restricts employees' liberty and personal autonomy, thereby intruding upon their privacy. I agree with this assessment.

[60] Several grievors described the profound dilemma they faced in choosing between receiving a vaccine they did not want—whether on principle, due to personal convictions, or because of deeply held subjective fears—and risking the loss of income or employment, with the associated familial pressures and difficulties.

[61] The right to privacy encompasses the right to base decisions on personal reasons<sup>19</sup>. The objective merit of those reasons, or how they are perceived by others, is irrelevant to the application of the reasonableness test. Importantly, the economic impact on individuals who refuse vaccination remains significant. Work holds a central place in people's lives<sup>20</sup>, obviously as a source of income, but also in terms of identity, well-being, and social status, as the Union submits<sup>21</sup>.

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the case for the right to privacy.); *Opsis Airport Services Inc. v. Quebec (Attorney General)*, 2025 SCC 17, *Hogue v. Canada Post Corporation*, 2025 QCCS 49, at 47 et seq., which decides that sections 4 and 5 of the Quebec Charter may apply. See also *Purolator Courier Ltd. v. Hamelin*, [2002] R.J.Q. 310, [2002] R.J.D.T. 8, J.E. 2002-390, D.T.E. 2002T-197, [2002] n° AZ-50112335 (C.A.) Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2002-12-05) 29119.

<sup>13</sup> *Irving, supra*, note 5, para. 6, 33; *Air Canada v. IAMAW District Lodge 140*, 2019 CanLII 5917(CA LA), para. 44.

<sup>14</sup> *Electric Safety Authority, supra*, note 9, para. 63 citing *Jones v. Tsige* (2012), 108 O.R. (3d) 241 (C.A.).

<sup>15</sup> Section 9.1 *Quebec Charter*.

<sup>16</sup> See *MacDonald, Dettwiler and Associates Corporation, supra*, note 8; *Syndicat des métallos, section locale 2008 v. Attorney General of Canada*, 2022 QCCS 2455, mentioned in *Syndicat des employé-e-s des aéroports de Montréal (CSD) and Aéroports de Montréal (Martin Gagné)*, (T.A., 2023-12-19), 2023 QCTA 540, SOQUIJ AZ-51992284, 2023 CanLII 122483 (CA SA) (Joëlle L'Heureux), concluding that the mandatory vaccination policy complied with the principles of fundamental justice. See also *Rehibi, supra*, note 9.

<sup>17</sup> See also, in the context of the KVP/Irving analysis: *Power Workers' Union and Elexicon Energy Inc.*, 2022 CanLII 7228 (ON LA) (C. Michael Mitchell), para. 92, *Alectra Utilities Corporation v Power Workers' Union*, 2022 CanLII 50548 (ON LA) (Suzan L. Stewart), paras. 20 and seq.

<sup>18</sup> *Elexicon Energy Inc., supra* note 17, para. 92.

<sup>19</sup> *CKF Inc. v Teamsters Local Union No. 213*, 2022 CanLII 60954 (BC LA) (Allison Matacheskie), para. 72.

<sup>20</sup> *Alectra Utilities Corporation, supra*, note 17, para. 21

<sup>21</sup> *Elexicon Energy Inc., supra* note 17; *BC Hydro and Power Authority v. International Brotherhood of Electrical Workers, Local 258*, 2022 CanLII 25764 (Gabriel Somjen); *"MoveUp", Fanshawe College and Ontario Public Service Employees Union, Local 110*, 2024 CanLII 11422 (ON LA) (Larry Steinberg); *Union*

### 1.2.2 The divergent interests of Employers and other employees

[62] That said, Bell also argues that there are several compelling reasons for mandatory vaccination.

[63] The foremost interest invoked—consistently emphasized in all communications regarding the MVP—is the protection of the health and safety of employees and customers. According to public health recommendations at the time, vaccination was the most effective means of preventing transmission and reducing the risk of severe outcomes.

[64] Part II of the Canada Labour Code (the *Code*) sets out significant health and safety obligations for both employers and employees. These provisions are intended to prevent accidents, injuries, and illnesses.

[65] Section 122.2 of the Code provides that preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees. Section 124 imposes a general duty on employers to protect all employees. The Union acknowledges this duty in several collective agreements concluded with the Employers. Paragraph 125.1y) of the Code also requires employers to ensure that the health and safety of employees are not compromised by the activities of any person granted access to the workplace, including consultants and suppliers. The MVP likewise requires vaccination for all individuals who may come into contact with employees, customers, or who visit Bell's facilities.

[66] The rights of other employees to a safe working environment, and their concerns about the potential consequences of illness, are also part of the divergent interests that must be considered<sup>22</sup>.

[67] The legislation also imposes a collective responsibility on employees in support of the employer's duty. Section 126(1)(c) of the Code requires each employee to take the necessary measures to ensure their own health and safety, as well as that of their colleagues and any person who may be affected by their actions or omissions. Consequently, unvaccinated employees are also subject to this obligation.

[68] In addition to the needs of its operational needs, Bell was increasingly confronted with customers requesting that assigned employees be vaccinated. It incorporated this business justification into its communications, rationale for the policy, and stated interests<sup>23</sup>.

## **2. Assessment of the reasonableness of the MVP**

[69] Under the KVP/Irving framework, assessing reasonableness requires balancing the burden imposed on employees—who must choose between their personal autonomy and their paid employment—against the means selected by the employer to achieve its

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*of Postal Communications Employees (PSAC) and Canada Post Corporation*, 2024 CanLII 38829 (CA LA) (Michelle Flaherty, para. 82; *Coast Mountain Bus Co.*, *supra*, note 8, para. 74.

<sup>22</sup> *Alectra Utilities Corporation*, *supra*, note 17, para. 21; *Coast Mountain Bus Co.*, *supra*, note 8.

<sup>23</sup> This was considered in the case law, such as in *BC Hydro and Power Authority*, *supra* note 21, para. 57, among other reasons.

workplace health and safety objective, namely vaccination. Both sets of interests must be weighed in this assessment.

[70] I begin by summarizing the main themes of the Union's submissions. First, the Union argues that maintaining the vaccination requirement throughout the entire implementation period was unreasonable, especially since, with the emergence of Omicron, vaccines had become less effective. According to the Union, the balance shifted even more strongly in favour of employees in April and May, when public health measures were easing to the point that employees could go to restaurants but were still not allowed to work. Second, the Union challenges Bell's use of disciplinary suspensions, combined with the threat of termination, to enforce the policy. Third, the Union submits that Bell crossed the line between responsible management and abuse of authority by applying the policy rigidly and mechanically, without regard for workplace realities. Fourth, the Union argues that Bell acted unreasonably by not recognizing natural immunity and by imposing a 14-day delay before employees could return to work following vaccination.

[71] Bell and the Employers submit that they acted reasonably at all times, from the adoption of the MVP to its ongoing application. They contend that the unpaid leaves were administrative measures; that consistency in application was required; that they had no obligation to modify working conditions; and that they adjusted their approach as the situation evolved, particularly by choosing not to dismiss any employees. Out of caution, they maintained the unpaid leaves until conditions stabilized. They acted when the federal government withdrew the vaccination requirement it had imposed, along with its expectations, and abandoned its plans to adopt a regulation.

[72] After considering the evidence, the parties' submissions, and the case law, I find that the MVP and its application are generally reasonable, except with respect to employees assigned to exclusive remote work with no probable return to the office. Due to insufficient evidence, I reserve my conclusion on two aspects of the policy's application: the 14-day post-vaccination delay and natural immunity.

[73] My analysis is conducted in two stages: first, from the adoption of the policy to the placement of unvaccinated employees on unpaid leave on February 1; second, from the beginning of April—when unpaid leaves were extended indefinitely—until June 29, 2022. Each period involved distinct measures, and the public health situation changed over time.

[74] All the decisions on mandatory vaccination that I have reviewed place considerable emphasis on context. In addition to the more general context of the pandemic, all tribunals ground their analysis in the circumstances as they existed at the time of the challenged decisions. They have often noted the instability and unpredictability of the virus's evolution and its consequences—both factually and scientifically—which employers had to

navigate<sup>24</sup>. What may have seemed unreasonable at one point could become reasonable a few months later<sup>25</sup>. The reverse was also observed over time<sup>26</sup>.

[75] Moreover, this matter was heard after the WHO lifted the global public health emergency in May 2023, more than two years after the relevant events. As Bell notes, it would be unfair to evaluate its decisions with the benefit of hindsight. I accept that the reasonableness of the MVP and its implementation must be assessed without the distortions of retrospective judgment, as held in *Canada Post Corporation*<sup>27</sup>.

## 2.1 Expert Evidence

[76] I summarize the expert evidence in very broad terms, emphasizing that each report and testimony were well developed and documented. I will return to this in the course of my analysis.

### 2.1.1 Expert for the Union

[77] The Union's expert is Dr. Marie-Claude Letellier, a physician specializing in public health and preventive medicine. She holds training in occupational medicine and public health. Her professional experience in public health spans roughly two years: she worked at the Public Health Directorate of Gaspésie-Îles-de-la-Madeleine between 2021 and 2023, where she took part in regional activities related to surveillance, prevention and health-risk management. Since 2022, she has also been practicing in a clinical setting with patients presenting work-related health issues, which provides her with experience in assessing and monitoring occupational conditions.

[78] Her contribution on research includes a one-year mandate at the National Asbestos Observatory, where she focused on analyzing risks associated with asbestos exposure. Her postdoctoral training also includes several scholarships obtained during her studies, demonstrating sustained academic interest. Her published work deals mainly with environmental health and occupational health issues.

[79] Dr. Letellier previously testified as an expert, though in a small number of matters of a different nature.

[80] In her report and during her testimony, she stated that she believed the employer's policy was inappropriate. According to Dr. Letellier, the COVID-19 vaccine does not effectively prevent transmission or infection. Its effectiveness wanes after vaccination, particularly against the Delta and Omicron variants. Previous infection provides immune protection equivalent to vaccination, although that protection also decreases over time.

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<sup>24</sup> With the new variants in particular: *Elexicon Energy Inc.*, *supra* note 17, on the "huge change" caused by Omicron in the winter of 21-22.

<sup>25</sup> In *Electrical Safety Authority*, *supra*, note 9, Adjudicator Stout considered the policy unreasonable in November 2021, specifying that the opposite could be true in the future; *Bailey*, *supra*, note 2, paras. 74 and 98, the adjudicator rendered two different decisions, varying according to the context.

<sup>26</sup> *Teamsters Local Union no. 31 and Purolator Canada Inc.*, 2023 CanLII 120937 (CA LA) (Nicholas Glass), Judicial review appeal dismissed: 2025 BCSC 148.

<sup>27</sup> *Canada Post Corporation*, *supra*, note 21, para. 80.

[81] In her opinion, the viral load of vaccinated and unvaccinated individuals is comparable, meaning that both groups can transmit the virus in a similar manner. Rapid testing was a recognized measure to reduce the risk of exposure, although it is not foolproof. It is more effective in symptomatic individuals. The presence of unvaccinated workers does not significantly increase the risk of transmission, as both vaccinated and unvaccinated individuals can transmit the virus. However, Dr. Letellier agrees that unvaccinated individuals are at greater risk of developing severe forms of the disease.

[82] The expert submits that the risk of transmission is lower outdoors due to better ventilation. However, a chart in the report indicates that the risk is increased during physical exertion.

[83] Dr. Letellier believes that mandatory vaccination can be useful in increasing vaccination rates when they are low, but it has disadvantages, including a loss of trust in public health authorities. During the period studied, vaccination rates were already high (80-90%), so the conditions were not met for mandatory vaccination policies. Furthermore, mandatory vaccination should be the responsibility of public authorities and not employers.

[84] Bell replaced other effective measures, such as rapid testing, with mandatory vaccination in February 2022, thereby limiting prevention options. Since the COVID-19 vaccine did not effectively prevent transmission, the scientific justification for such a policy was weak in the expert's view. A combination of measures (remote work, rapid tests, protective equipment) would have been more appropriate to ensure the safety of employees and clients. Dr. Letellier adds that Bell's policy contributed to stigmatizing unvaccinated workers and creating inequalities, although less restrictive alternatives were available.

### **2.1.2 Expert for Bell**

[85] Bell's expert is Dr. Mark Loeb, a medical specialist holding triple certification in internal medicine, medical microbiology, and infectious diseases. Professor at McMaster University for more than twenty-five years, he has served within the Departments of Pathology and Molecular Medicine, and of Health Research Methods, Evidence and Impact. He led McMaster's Division of Infectious Diseases for ten years and has held the Canada Research Chair in Infectious Diseases since 2004.

[86] His career, spanning more than three decades, is directly connected to the scientific issues in dispute. He has devoted the bulk of his research to the study of respiratory virus transmission (including influenza and SARS-CoV-2), vaccine effectiveness, viral load dynamics, and large-scale randomized clinical trials. He also co-directed the WHO Collaborating Centre on Infectious Diseases and conducted several systematic reviews for the WHO. Author of more than 450 peer-reviewed publications, he has obtained over 80 million dollars in research funding as principal investigator and has served on numerous national expert committees, including the Canadian COVID-19 Vaccine Task Force.

[87] These achievements reflect internationally recognized scientific expertise directly related to the central themes of this case: infection, viral transmission, vaccine effectiveness, influenza, COVID-19 and public-health preventive measures.

[88] Dr. Loeb has repeatedly been recognized as an expert, including in several cases specifically dealing with mandatory COVID-19 vaccination, such as *Toronto District School Board*<sup>28</sup>.

[89] The expert explains that asymptomatic or presymptomatic transmission represents a significant portion of cases (estimated at 40–50%). This complicates efforts to control spread, as infected individuals may be unaware that they are contagious. According to Dr. Loeb, vaccination is the most effective method of reducing transmission, which, in turn, protects against infection and disease outcomes. Masks, physical distancing and ventilation are also useful, but their effectiveness is less well documented. Herd immunity is considered unlikely for SARS-CoV-2 and should not be relied upon.

[90] Vaccines are considered safe, with mostly mild side effects (fatigue, injection-site pain). Severe reactions, such as thromboses associated with viral-vector vaccines, are extremely rare.

[91] According to the expert, mRNA vaccines (Pfizer, Moderna) and viral-vector vaccines (AstraZeneca, Johnson & Johnson) are effective at preventing symptomatic infection, hospitalization and death. Studies show that vaccinated individuals are less likely to transmit the virus. For example, household studies have shown a 37% reduction in transmission for Omicron and 64% for Delta, reducing infection risk for others.

[92] Dr. Loeb agrees that vaccine effectiveness against transmission wanes over time, requiring booster doses to maintain protection, especially against Omicron. However, protection against severe disease and death remains significant.

[93] Rapid antigen tests are less sensitive than PCR tests, especially in asymptomatic individuals or early in infection, when carriers are most contagious. Their effectiveness in reducing transmission has not been demonstrated. Vaccination is identified as the most effective method to limit transmission in the workplace.

[94] Dr. Loeb disputes several assertions made in Dr. Letellier's report, including that vaccines do not prevent transmission. A study supports the finding that the viral load is lower among vaccinated individuals. He also critiques Dr. Letellier's use of data, noting that his own analysis relies solely on peer-reviewed studies. The employer's expert rejects the idea that rapid antigen tests can replace vaccination and emphasizes the effectiveness of vaccination in protecting individuals against infection.

### **2.1.3 Overall Assessment of Expert Evidence**

[95] Both experts are qualified, but the scope and focus of their respective expertise differ significantly in relation to the scientific issues at stake. Dr. Letellier has targeted, short-term professional experience in regional public health and occupational health, along with limited involvement in research, mainly in fields unrelated to viral dynamics or vaccine effectiveness. She has not conducted research on influenza, COVID-19, transmission modelling or vaccine clinical trials.

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<sup>28</sup> *Toronto District School Board, supra*, note 9.

[96] Dr. Letellier takes a direct stance against the reasonableness of the policy—the central issue in dispute—for ethical principles that fuel debate among public-health experts. It is not the role of an arbitrator to resolve such debates<sup>29</sup>. Moreover, Employers have statutory obligations that tribunals must take into account. The claim that Bell's MVP stigmatized employees is a generalization unsupported by evidence: the expert did not conduct a field inquiry, nor was she mandated to do so.

[97] Dr. Loeb, for his part, has broad and internationally recognized scientific expertise directly related to the issues raised. He has devoted a substantial portion of his career to studying respiratory virus transmission, vaccine effectiveness, viral-load analysis, scientific reviews, clinical trials and the development of recommendations for public-health authorities. His opinion is grounded in a large body of peer-reviewed scientific evidence and aligns with public-health-agency guidance.

[98] I do not entirely reject Dr. Letellier's opinion on reduced vaccine effectiveness against Omicron. However, hindsight must be avoided. Some of her assertions—including the general equivalence of transmission risks between vaccinated and unvaccinated individuals—were contradicted by studies presented by Dr. Loeb. That said, her opinion on natural immunity and the increased risk of transmission during strenuous activity was unchallenged, and I accept it.

[99] Accordingly, I give greater weight to Dr. Loeb's opinion on vaccine effectiveness, having in mind the evolution of scientific knowledge over time. His work directly addresses the scientific questions raised. His expertise is extensive and well established, and he relies on peer-reviewed studies. His opinion is consistent with the guidance of public health agencies on which Employers were entitled to rely according to the prevailing judicial approach.

## **2.2. Reasonableness of the MVP from its adoption to February 1, 2022**

[100] The evidence establishes that the circumstances aligned with the prevailing arbitral consensus that mandatory vaccination was a reasonable means of reducing workplace COVID-19 risks. The severity and exceptional nature of the crisis justified requiring vaccination. No alternative controls offered an equivalent level of protection. The steps implemented by Bell were supported by the evidence. Employers were not required to adjust working conditions to accommodate an employee's refusal. However, to be reasonable, the requirements had to contribute meaningfully to the policy's objectives, a threshold not met for employees working exclusively from home with no probable return to the workplace.

### **2.2.1 Conditions in fall 2021**

[101] In August 2021, when the MVP was announced alongside the federal government's expectations, the Public Health Agency of Canada (PHAC) reported nearly 27,000 COVID-19-related deaths and numerous ongoing hospitalizations, including intensive care admissions for severe illness. The fourth wave, driven by the Delta variant, brought an

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<sup>29</sup> *Coast Mountain Bus Co.*, *supra*, note 8, para. 77.

increase in serious cases, affecting primarily those who were unvaccinated or only partially vaccinated. Low vaccination coverage in certain settings increased the likelihood of new variants emerging—potentially vaccine-resistant and posing heightened risks for all.

[102] PHAC indicated that vaccination, combined with existing public health measures, was considered effective at reducing transmission and severe outcomes regardless of the dominant variant. At that time, unvaccinated individuals faced an eleven-fold higher risk of infection and a thirty-fold higher risk of hospitalization than fully vaccinated individuals. In the context of the Delta variant, PHAC stressed the importance of fully vaccinating as many people as possible.

[103] Two months later, in October 2021, the Delta variant continued to affect unvaccinated individuals at significantly higher rates. Although national vaccination had increased, PHAC emphasized the need to intensify efforts to reach maximal coverage ahead of the fall and winter indoor seasons.

[104] It was in this factual context that Bell implemented its mandatory vaccination policy. Management provided employees with time to update their vaccination status, followed by a transitional period from November through January during which unvaccinated employees were subject to additional requirements, including twice-weekly rapid testing and a prohibition on attending the workplace unless necessary. Bell maintained a range of risk-mitigation protocols.

### **2.2.2 Conditions in winter 2021-2022**

[105] In December 2021, the country was overtaken by the Omicron wave. This highly transmissible variant caused a significant deterioration in public health conditions, prompting governments to reintroduce very restrictive measures, including lockdowns.

[106] The protection afforded by prior immunity became uncertain with the arrival of this new variant, but PHAC maintained its recommendation to vaccinate. Vaccination of eligible individuals who had not yet received their primary series was deemed an “absolute priority.”

[107] In January, epidemic activity intensified. PHAC warned of a rapid increase in the number of infected and ill individuals. At that time, studies confirmed that vaccination—two doses—offered strong protection against severe illness, though it was less effective at preventing infection. A third dose improved this protection, and boosters were therefore recommended for eligible individuals, although becoming available by age group. The “vaccine plus” approach—vaccination combined with targeted measures such as masking and isolation when symptomatic—was still considered essential to Canada’s pandemic response.

[108] Bell continued to apply this vaccine-plus approach. In addition, although the MVP did not require employees to upload proof of a booster, it nonetheless required them to maintain adequate protection.

[109] In December, Bell announced its intention to end the rapid testing program for unvaccinated employees as of January 31, 2022, and concurrently to place them on a three-month unpaid leave beginning February 1. The notice mentioned that the employer

could terminate employment without further notice for non-compliance if they remained unvaccinated at the end of their leave.

[110] The stated objective was to proceed with the mandatory return to the office in accordance with the Workways program. Employees received individual reminders at each step of the schedule. The deadline for receiving a second dose was first extended to January 31, 2022, then to February 28, 2022.

[111] Given the deteriorating public health situation in December and January, Bell postponed the large-scale mandatory return to the office and announced the postponement on January 10, 2022. However, it maintained its plan to place unvaccinated employees on unpaid leave, with a final extension of the deadline for the second dose to February 28.

[112] On February 1, 2022, employees who were unvaccinated or who had not scheduled a second dose were placed on unpaid leave until April 30, regardless of their work profile or location. The notice stated that at the end of this period, the employer would terminate their employment without further notice if they remained non-compliant.

[113] Although issued shortly afterward, the February 4, 2022 notice from PHAC's Chief Public Health Officer provides insight into the situation prevailing at the time Bell made its decision. It states that an unprecedented number of individuals had been infected with the Omicron variant in Canada. The Agency reiterated its strong recommendation that all eligible individuals—including those previously infected—be vaccinated and keep their vaccinations up to date.

### **2.2.3 Decisional Consensus**

[114] Canadian case law and arbitral authority strongly support Bell's policy up to its implementation in February 2022. Across decisions issued in a wide range of workplaces, a consensus emerged that mandatory vaccination was a reasonable measure. This conclusion was grounded in the fact that COVID-19 created an unprecedented global public health crisis requiring heightened prudence and precautions to protect employee health and safety. The virus evolved unpredictably, and the potential consequences of infection were severe.

[115] Thus, policies imposed pursuant to a legal requirement—whether through a decree, regulation, or public health order—were upheld<sup>30</sup>. In such cases, even though the employer has no discretion, decision-makers nonetheless used the KVP framework to confirm the reasonableness of the policies<sup>31</sup>. Extending a mandatory policy to additional employees beyond the minimum legal requirement was also upheld<sup>32</sup>.

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<sup>30</sup> *Bailey v New Brunswick Power Corporation*, *supra*, note 2; *White-O'Connell and New Brunswick Community College, Re*, 2022 CarswellNB 396; *Henrikson v West Jet, an Alberta Partnership*, 2024 CCRI 1157; *Panetta v Air Canada*, 2024 CCRI 1155; *Unifor Local 4209 v YRC Freight Canada*, 2023 CanLII 13807 (CA LA) (Tom Hodges), a cross-border transportation company; *Toronto District School Board*, *supra*, note 9.

<sup>31</sup> *Bailey v New Brunswick Power Corporation*, *supra*, note 2, paras. 71-73.

<sup>32</sup> *Panetta v Air Canada*, *supra* note 30.

[116] The federal government’s vaccination policy was found to be reasonable<sup>33</sup>, based on data and advice from PHAC and Health Canada indicating that vaccination was the most effective means of reducing transmission and COVID-19–related risks<sup>34</sup>. Mandatory vaccination policies were also upheld within essential-service workplaces<sup>35</sup>—including electricity and critical infrastructure operations like Bell<sup>36</sup>—and for federal government suppliers<sup>37</sup>. They were likewise maintained in workplaces subject to federal expectations<sup>38</sup>. The same is true for many other employers<sup>39</sup>, as illustrated by case law.

[117] In all these cases, arbitrators, boards and courts gave priority to the collective interests of the workforce over the individual interests of employees refusing vaccination for personal reasons<sup>40</sup>. They found that the potential health consequences of infection outweighed both the privacy intrusions and the economic impacts associated with refusal<sup>41</sup>. Employees also have a statutory duty to take measures to protect their colleagues; which weighs for prioritizing group interests over those of unvaccinated employees. Vaccinated employees have rights as well. Operational needs must also be met.

[118] Decision-makers consistently held that it was legitimate for employers to exercise heightened prudence and adopt preventive steps to protect the health and safety of all employees. At that stage of the pandemic, the situation was marked first by variants causing serious health consequences throughout the fall, and then by what some decisions described as the massive shift<sup>42</sup> brought by Omicron—so highly transmissible that public health authorities were compelled to reimpose lockdowns and other restrictive measures.

[119] As previously noted—and as decision-makers consistently observed—PHAC and provincial public health agencies strongly recommended vaccination at that time based on its effectiveness in reducing transmission and the risks associated with COVID-19. They promoted a “vaccine plus” approach like Bell’s, combining vaccination with individual protective measures such as masking, hygiene practices, distancing, and prohibiting gatherings. There was broad consensus that vaccines are safe: contraindications are rare and relate to conditions for which an exemption may be granted.

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<sup>33</sup> *Rehibi, supra*, note 9.

<sup>34</sup> *Id.*, paras. 260-261

<sup>35</sup> *Elexicon Energy Inc.*, *supra* note 17; *Alectra*,; 25. *Unifor, Local 1999 v Reliance Comfort Limited Partnership*, 2023 CanLII 2 (ON LA) (Derek L. Rogers)

<sup>36</sup> *New Brunswick Power Corporation, supra*, note 2; *BC Hydro Power Authority, supra*, note 21.

<sup>37</sup> *MacDonald Corporation, Dettwiler, supra*, note 8, a manufacturer of telecommunications and satellite systems.

<sup>38</sup> *Mata v. Canada Mortgage and Housing Corporation*, 2024 CCRI 1141.

<sup>39</sup> *Parmar, supra*, note 2; *CKF Inc.*, *supra*, note 19, a food packaging products manufacturing company; *Unifor, Local 882 v Maritime Paper Products Limited Partnership*, 2022 CanLII 109448, 2022 CarswellNS 800 (George Filiter) a corrugated cardboard packaging manufacturer.

<sup>40</sup> *Bailey v New Brunswick Power Corporation, supra*, note 2, para. 90, citing *Maple Leaf Foods Inc., Brantford Facility v. UFCW, Local 175*, 2022 CanLII 28285.

<sup>41</sup> *Alectra Utilities Corporation, supra*, note 17, para. 21.

<sup>42</sup> *Elexicon Energy Inc.*, *supra* note 17, para. 4.

## 2.2.4 Precautionary Principle

[120] The Union submits that Bell failed to demonstrate that a problem had materialized in the workplace, despite the protective measures already in place. In its view, such a demonstration was necessary to warrant such a significant intrusion into employees' privacy and to remove them from the workplace without pay<sup>43</sup>.

[121] Some testimony referred to instances of infection and related leaves of absence, but these were anecdotal. While more extensive evidence might have been useful, it was not essential.

[122] Decision-makers have recognized that the risks associated with the unprecedented COVID-19 pandemic, prevailing across Canada, were sufficient<sup>44</sup> to justify preventive measures<sup>45</sup> grounded in heightened caution—without requiring the employer to wait until an employee became seriously ill, or until multiple events or outbreaks accumulated in the workplace<sup>46</sup>. These policies are not implemented to address an existing problem within the workplace, as in the cases discussed in *Irving*, but rather to prevent one from arising. In *Coca Cola Canada*<sup>47</sup>, Arbitrator Noonan explains the difference between the issues employers faced in the COVID-19 context:

75.The reason that those cases are of limited assistance is that with COVID-19, it has been amply demonstrated that, unchecked, the virus can spread quickly through workplaces and through the community-at-large, with devastating consequences both to employee health and safety and to the ability of an employer to continue to operate. Because of that, the very nature of anti-COVID policies is precautionary, that is, not as a reaction to a problem in a particular workplace after it has arisen, but rather to prevent it arising in the first place and reduce the risks of contamination and serious illness as a result of contracting the disease. In short, the reasonableness of such policies must, in my view, be analyzed not through the lens of the random drug and alcohol testing cases in which the policies are a reaction to a demonstrable problem that has arisen in the workplace, but rather as policies designed to prevent or reduce the consequences of the problem before it takes hold in the workplace.

[123] In *MDA*<sup>48</sup>, for example, Arbitrator Johanne Cavé declined to draw any inference from the absence of outbreaks in the workplace, noting that this did not demonstrate that the risk was eliminated or reduced. The purpose of the policy was to prevent any transmission—not only multiple cases—as even a single COVID-19 infection could have severe,

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<sup>43</sup> *Irving*, *supra* note 5; *Electrical Safety Authority*, *supra*, note 9. See also *Air Canada v. IAMAW District Lodge 140*, 2019 CanLII 5917 (CA LA).

<sup>44</sup> *Maritime Paper Products Limited Partnership*, *supra*, note 39; *Bailey v New Brunswick Power Corporation*, *supra*, note 2, para. 76.

<sup>45</sup> *Bailey v New Brunswick Power Corporation*, *supra*, note 2, paras. 56, 137, 142.

<sup>46</sup> *Parmar*, *supra*, note 2, paras. 99, 012, 108; *BC Hydro Power Authority*, *supra*, note 21, para. 54; 25. *Unifor, Local 1999 v Reliance Comfort Limited Partnership*, 2023 CanLII 2 (ON LA) (Derek L. Rogers), at 84, on the necessary distinction from the situations addressed in *Irving*; *MacDonald Corporation, Dettwiler and Associates*, *supra*, note 8, at para. 62.

<sup>47</sup> *Unifor Local 973 v Coca-Cola Canada Bottling Limited*, 2022 CanLII 25769 (ON LA) (Mark Wright), at para. 75, cited in *Coast Mountain Bus Co.*, *supra*, note 8, at para. 82.

<sup>48</sup> *MacDonald, Dettwiler and Associates Corporation*, *supra*, note 8, para. 74.

potentially fatal health consequences. Bell employees were not exempt from these risks or from the serious consequences of contracting the disease.

[124] The key consideration is the precautionary principle<sup>49</sup>, which requires employers to take all available and most effective measures to prevent illness and death where circumstances remain uncertain or unpredictable. The essential purpose is to guard against what remains unknown<sup>50</sup>.

[125] I therefore find that Bell could reasonably exercise greater caution and rely on the precautionary principle in adopting and applying its policy, consistent with its protective obligation under section 124 of the Code. This is particularly so given that Bell's services were deemed essential—on par with those provided by health-care workers, according to the government notice. The nature of these services warrants a precautionary approach<sup>51</sup>, as a means of protecting employee and customer health and ensuring the continuity of Bell's mission and operational needs.

### **2.2.5 Characterization of unpaid leaves, reasonableness of the disciplinary approach, and its application**

[126] The Union also argues that the unpaid leaves of unvaccinated employees amounted to disciplinary suspensions, since they were unilaterally imposed by the employer. In its view, the wording of the MVP signaled a sanction for the employee's conduct<sup>52</sup>, which, according to the case law, constitutes a disciplinary measure and therefore triggers the procedural protections set out in the collective agreements<sup>53</sup>, including the presence of a union representative—often omitted. Several grievors also challenge the reasonableness of these decisions, which they consider excessive and disproportionate, given that vaccination remains a personal choice.

[127] The Employers submit that the disciplinary procedures provided in collective agreements do not apply here. The unpaid leaves pursued an administrative objective: protecting health and safety through vaccination. In their view, it was nonetheless reasonable to provide sanctions for refusal to comply with the vaccination requirement, including termination of employment in cases of persistent non-compliance. Bell was

<sup>49</sup> *Alectra*, paras. 21; 22. *Toronto District School Board*, *supra*, note 9, para. 20; *BC Hydro and Power Authority* *supra*, note 21, para. 54; *CKF Inc.*, *supra*, note 19, para. 72; *Coast Mountain Bus Co.*, *supra*, note 8, paras. 82-83; *Reliance Comfort Limited Partnership*, *supra*, note 46, paras. 79-87; *Electrical Safety Authority*, *supra*, note 9, paras. 68 and 69; *Elexicon Energy Inc.*, *supra* note 17, para. 97; *Coca-Cola Canada Bottling Limited*, *supra* note 47, paras. 23-29; *MacDonald, Dettwiler and Associates Corporation*, *supra*, note 8, para. 75 citing *Elementary Teachers' Federation of Ontario v Ottawa-Carleton District School Board*, 2022 CanLII 53799 (ON LA); etc.

<sup>50</sup> *Elexicon Energy Inc.*, *supra* note 17, paras. 6 and 101, citing *Ontario Nurses Association v. Eatonville/Henley Place*, 2020 ONSC 2467 (CanLII), see also paras. 98 and 99.

<sup>51</sup> *B.C. Hydro and Power Authority*, *supra*, note 21, paras. 22-29; *Bailey v New Brunswick Power Corporation*, *supra*, note 2, para. 87; *Elexicon Energy Inc.*, *supra* note 17, para. 105.

<sup>52</sup> *Syndicat des employés municipaux de Jonquière, section locale 2466 (S.C.F.P.) c. Ville de Jonquière*, [1998] R.J.D.T. 5, J.E. 98-108, D.T.E. 98T-33, [1997] no AZ-98011026 (C.A.), 1997 CanLII 10188 (C.A.).

<sup>53</sup> It should be noted that not all collective agreements require the presence of a union representative or impose procedural formalities: see the Bell Canada Sales Agreement, the Bell Canada Office Unit Agreement, and the Northerntel collective agreement.

required to give employees clear notice of this possibility. Bell had an obligation to adequately inform employees of this possibility.

**A) Unpaid Leaves were administrative in nature**

[128] I find that the unpaid leaves were suspensions, as they were imposed unilaterally by the employer<sup>54</sup>. Generally, as typically applied in workplaces, such measures are administrative in nature, as recognized in the case law<sup>55</sup>. The purpose is not punitive, but to prompt employees to be vaccinated as a protective measure and, failing that, to remove them from the workplace in order to mitigate risk<sup>56</sup>.

[129] Moreover, these measures have often been favoured by employers or imposed as an appropriate alternative when arbitrators have expressed their disagreement with the disciplinary approach leading to termination of employment.

[130] In this case, Bell considered unpaid leaves as being administrative. It allowed monetary benefits such as banked time or vacations to be cashed out to mitigate the economic impact on employees and temporarily maintained employer contributions to pension plans and insurance, which is unusual in a disciplinary process unless provided for in the collective agreement.

**B) The possibility of disciplinary action does not undermine the reasonableness of the policy**

[131] The purpose here is to address the allegation that the MVP's reference to disciplinary sanctions, together with the threat of termination without notice on January 31, 2022, supports a characterization of the policy and its implementation as being intrinsically unreasonable.

[132] Although the case law is not unanimous regarding the use of discipline for breach of a vaccination policy, most arbitrators found it does not affect the validity of such policies. Those who rejected the disciplinary approach simply removed that possibility as a means to enforce the vaccination mandate<sup>57</sup>, without ruling out that it may be appropriate in the future<sup>58</sup>. For the majority, however, disciplinary consequences were reasonable, provided that the information was clear and that progressive measures preceded termination or the end of employment<sup>59</sup>. They also considered that, under the collective agreement, the employer is required to base such a decision on just and reasonable grounds, having regard to the circumstances prevailing at that time<sup>60</sup>. Thus, it is not sufficient for the policy to be reasonable at the outset; its application must also be reasonable at the time of dismissal

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<sup>54</sup> *Cabiakman v. Industrielle-Alliance Cie d'Assurance sur la Vie*, 2004 SCC 55.

<sup>55</sup> The Canadian decisions cited by the parties characterize these measures as administrative when the employer has treated them as such. In Quebec in particular, see *Aéroports de Montréal*, *supra*, note 16.

<sup>56</sup> *BC Hydro and Power Authority*, *supra* note 21, para. 82.

<sup>57</sup> *Id.*, paras. 73 to 92, in particular to favor the administrative leave approach as mentioned above.

<sup>58</sup> For example, *Elexicon Energy Inc.*, *supra* note 17.

<sup>59</sup> See the analysis by arbitrator L'Heureux in *Aéroports de Montréal*, *supra*, note 16; *Revera Inc. Brierwood Gardens et al. v. Christian Labour Association of Canada Award*, 2022 CanLII 28657 (Christopher White), para. 153.

<sup>60</sup> *Aéroports de Montréal*, *supra*, note 16, para. 47.; *Alectra Utilities Corporation*, *supra*, note 17, para. 23.

and substantiate such a decision. As we know, no employee was terminated pursuant to the MVP.

[133] In my view, the challenges to the MVP on the basis that it could result in administrative economic consequences or disciplinary sanctions are unfounded. It was reasonable to provide for such consequences to ensure enforcement of the vaccination requirement. Prompting employees to accept vaccination was the objective pursued, and that objective is itself reasonable. The information provided was clear regarding the consequences of refusal; employees had appropriate time to get vaccinated—which many did; the measures were progressive. The collective agreements offer an additional layer of protection by requiring reasonable grounds should the employer ultimately terminate employees who refuse to comply with the policy.

[134] In sum, the policy is reasonable, as is the intended effect of prompting employees to be vaccinated. As a result, the grievances of Andre George (grievance 25-712-2021 – Bell Canada Mississauga) and Natacha Duquette (grievance B8284-002-F – Expertech), both of whom were vaccinated before February 1, are dismissed.

#### **2.2.6 Less intrusive means**

[135] As previously noted, a central component of the balancing of interests analysis involves determining whether less intrusive measures than mandatory vaccination were available to Employers, so as to reduce the impact on the rights of employees who refused to comply.

##### ***A) Masking, rapid antigen testing, and distancing***

[136] The Union submits that rapid antigen testing should have been preferred to limit the intrusion into employees' privacy, in accordance with the proportionality principle. Bell ended biweekly testing despite access to a federally funded program. Employees could even have covered the cost themselves. These tests, when combined with masking, distancing and solo work, could mitigate the risks just as effectively as vaccination. The expert for the Union shares this view but Dr. Loeb strongly disagrees.

[137] Bell argues that it prioritized vaccination as the most effective collective measure, consistent with public health authorities' guidance, while maintaining other preventive means. Its objective was a gradual return to normal operations.

[138] In *ESA*<sup>61</sup>, Arbitrator Stout accepted regular self-administered rapid antigen testing as an equivalent preventive measure to vaccination. However, the subsequent case law largely rejected this conclusion<sup>62</sup>. Decision-makers—often arbitrators—relied on public health agency guidance to conclude that while these measures may contribute to reducing

<sup>61</sup> *Electrical Safety Authority, supra*, note 9.

<sup>62</sup> *BC Hydro Power Authority, supra*, note 21, para. 108, explains the evolution of the situation well in paras. 61 et seq. This latter approach is then followed in *Toronto District School Board, supra*, note 9, para. 21.

transmission, they do not match the effectiveness of vaccination<sup>63</sup>, which at the time was considered the most effective measure to protect employees<sup>64</sup>.

[139] Dr. Loeb provides helpful clarification on this point. A key reason is the lack, or near absence, of epidemiological studies supporting the effectiveness of alternative measures compared with vaccination.

[140] Rapid antigen tests are unreliable for detecting infection in asymptomatic carriers—who are also at their most contagious—with numerous false negatives, a point also acknowledged by Dr. Letellier.

[141] According to Dr. Loeb, distancing can reduce source transmission but does not prevent aerosol transmission in poorly ventilated indoor spaces with multiple individuals present. Furthermore, the best study on masks found a 9% effectiveness rate as a source control. Another Norwegian study involving infected individuals detected no positive effect from masking. The protective benefits of masks in relation to the risk arising from absence or inadequate ventilation in enclosed spaces have not been studied. In addition, masks must be worn, and distancing must be respected, always, to be effective. One witness acknowledged that his manager had to impose discipline on his entire team of technicians because they repeatedly failed to comply with the masking directive. Employers have limited means of ensuring full compliance with protocols because employees very often perform their duties independently, without any managerial supervision.

[142] Dr. Loeb noted that, contemporaneously with the measures imposed in February 2022, scientific studies identified vaccination as the most effective means of reducing viral transmission and protecting employees in the workplace. Large, randomized studies showed effectiveness rates as high as 90%, meaning that within a group of vaccinated individuals exposed to the virus, 10% would become infected. Meta-analyses reviewed by the expert for the Delta variant—still circulating in fall 2021—concluded that vaccination reduced both transmission and infection risk, for an overall protection range of 58% to 69%. Household-based studies found a 70% reduction in transmission for the first study and 46% for the second among vaccinated individuals. A Danish study observed similar reductions among thousands of individuals exposed to Omicron or Delta. Another study found that unvaccinated individuals were 37% more likely to transmit the virus than vaccinated individuals. Finally, studies demonstrated that vaccination provided strong protection against severe disease, according to Bell's expert, consistent with the views of PHAC and the Union's expert. All scientific texts were submitted.

[143] In this case, section 122.2 of the Code supports Bell's decision to prioritize mandatory vaccination. This statutory provision sets out the hierarchy of measures to ensure employee health and safety. Legislation requires employers to prioritize the elimination and reduction of risk before resorting to protective equipment or devices. Vaccination does not eliminate risk—because it does not prevent infection, as Dr. Letellier emphasized—yet it reduces the

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<sup>63</sup> See, for example, *BC Hydro Power Authority*, *supra*, note 21, paras. 68, 72; *Alectra Utilities Corporation*, *supra*, note 17, paras. 92, 93.

<sup>64</sup> *MacDonald, Dettwiler and Associates*, *supra*, note 8, para. 62.

risk according to the dominant view of public health agencies at the time of the challenged decisions, namely winter 2022, and according to Dr. Loeb's testimony.

[144] In *Coast Mountain Bus Co.*<sup>65</sup>, the arbitrator based his decision on a similar hierarchy set out in British Columbia's occupational health and safety program<sup>66</sup>, which led him to prioritize vaccination as a high-level protective measure whose effectiveness surpasses PPE, distancing, and administrative controls such as testing.

[145] Since the means suggested by the Union were not equivalent, I find that Bell and Employers could reasonably require vaccination.

***B) Individualized alteration of working conditions of employees refusing vaccination***

[146] The rigidity with which the policy was applied lies at the heart of the challenge to its reasonableness. The Union argues that Employers acted abusively, particularly when simple measures that could have met the MVP'S health-protection objectives pursued by the MVP were overlooked, and unvaccinated employees placed on unpaid leave.<sup>67</sup>

[147] In a few decisions issued during the pandemic, arbitrators found vaccination policies unreasonable when applied to unvaccinated employees who *could* work remotely or exclusively outdoors. They ultimately required the employer to adjust its work organization and operational practices to prevent in-office attendance or customer interactions. In *Elexicon*<sup>68</sup>, for example, the arbitrator ordered the employer to negotiate "accommodations" for unvaccinated outdoor workers to remove incidental human contacts. Jurisdiction was reserved to resolve any disagreement on that point.

[148] Relying on these decisions, the Union submits that, by failing to reorganize work so as to eliminate the limited inherent risks for minimally exposed employees in order to keep them at work, Employers failed to act reasonably in applying the MVP. As alternative solutions, the Union suggested changes to work schedules or assignments and adjustments to operational practices.

[149] Respectfully, I find no basis in the KVP/Irving framework for imposing on the employer a duty to alter working conditions, reorganize work, or adjust operational practices for individuals who refuse to comply with a policy, to meet the criterion of reasonableness for these employees. The model contains no such obligation. On the contrary, consistency is an independent validity requirement—distinct from reasonableness—that must likewise be fully respected. In my view, any "less intrusive means" to be considered in assessing an intrusion on privacy must be available to all employees *from the outset* to ensure fairness and consistency. Quite obviously, the compliance rate would have been markedly different had employees been advised that their work arrangements could be adapted to avoid vaccination for personal reasons or the consequence of a refusal. In such a scenario, the

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<sup>65</sup> *Coast Mountain Bus Co.*, *supra* note 8, para. 43

<sup>66</sup> Worksafe BC,

<sup>67</sup> *Bhasin v. Hrynew*, 2014 SCC 71; *Bell Canada v. Unifor, Local 34-0*, 2016 CanLII 11573; *Syndicat des employés municipaux de Saint-Adolphe-d'Howard (FISA) et Municipalité de Saint-Adolphe-d'Howard*, 2022 QCTA 118 (Pierre-Marc Hamelin).

<sup>68</sup> *Elexicon Energy Inc.*, *supra*, note 17.

policy would not have been truly mandatory, its effectiveness would have been compromised, and the vaccination requirement deprived of its underlying rationale.

[150] As many arbitrators and tribunals have held, in the absence of a ground protected under human rights legislation—and none of the personal reasons put forward here qualify—Employers were under no duty to accommodate in order to shield employees from the economic consequences of a refusal to be vaccinated<sup>69</sup>. Under human rights legislation, specific adaptations of the MVP and work arrangements are necessary and warranted to mitigate the disadvantage arising from a protected personal characteristic. That obligation overrides the employer’s management rights because these are matters of imperative public policy.

[151] There is no legal basis for broadly extending such accommodations to employees who object to vaccination for purely personal reasons. The employer’s management rights remain intact, albeit subject to reasonableness. Where the policy is reasonable to mitigate risks associated with in-person work, on-site duties, or customer contact, the employer must apply it consistently to all employees performing work in such circumstances. After-the-fact alterations to allow unvaccinated employees to avoid vaccination, or the consequence of a refusal, directly contradict this crucial principle.

[152] In *Canada Post Corporation*<sup>70</sup>, the Honourable Flaherty, then arbitrator, found that it would be unreasonable to impose such a burden on the employer, a conclusion that is difficult to dispute for a national employer such as the one involved, which would then have been required to deal with hundreds of individual accommodation requests simultaneously.

[153] The same reasoning applies here. What may seem practical for a small organization<sup>71</sup> or a medium-sized employer such as *Elexicon*<sup>72</sup> cannot be duplicated for employers such as Bell Canada or BTS. They have thousands of employees<sup>73</sup> spread across multiple sites under the direction of many different managers. Even though some jobs share common characteristics, not all of them have been addressed, and the organization of work varies according to position, environment (urban or rural), location, skills, clientele, assignments,

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<sup>69</sup> *Canada Post Corporation*, *supra*, note 21; *Alectra Utilities Corporation*, *supra*, note 17, paras. 145, 156, 213, where the arbitrator decided that assessing the effectiveness of remotework was a management prerogative and found that a gradual return to the office was reasonable; *Mata v. Canada Mortgage and Housing Corporation*, 2024 CCRI 1141, paras. 86-87: the employer was not required to modify the duties to allow the complainant to work remotely; *Rehibi*, *supra*, note 9, 351-354: the Board rejects the argument that the employer should have allowed unvaccinated employees to work exclusively from home or modified their duties to avoid working in person; *United Food and Commercial Workers Union, Canada Local 333 v. Paragon Protection* 2021 CarswellOnt 16048 (F.R. Von Veh): the employer may reassign unvaccinated employees to different sites, but is not required to modify duties to avoid the consequences of the policy; *Aéroports de Montréal*, *supra*, note 16, paras. 34 and 39.

<sup>70</sup> *Canada Post Corporation*, *supra*, note 21.

<sup>71</sup> *Municipality of Saint-Adolphe-d'Howard*, *supra*, note 69, where the arbitrator found that the employer abused its rights by immediately imposing unpaid leave on two employees rather than discussing with the union the possibility of placing them on remote work.

<sup>72</sup> *Elexicon Energy Inc.*, *supra*, note 17.

<sup>73</sup> For example, BTS employs 5,000 technicians in Quebec and Ontario.

and time of year. The approach taken in *Elexicon*<sup>74</sup>, which required the employer to negotiate, with the union, all adjustments to accommodate unvaccinated employees in two job categories, and defer all disagreements to arbitration, would have been impossible to implement here within a useful timeframe given the number and diversity of situations involved.

[154] In conclusion, I find that Employers had no duty to further reorganize work or adjust operational practices to accommodate the personal views of employees who refused vaccination or to shield them from the consequences of that refusal. With the vaccination requirement having been suspended, the only relevant question is whether its application was reasonable, considering the working conditions that existed at that time.

### **2.2.7 Unpaid leave of employees who work remotely**

[155] The MVP outlines the circumstances in which mandatory vaccination is required, including visiting or working from a Bell site or office, even occasionally. Its purpose is to protect employees in situations that involve the inherent risks of human contact—the very risks the MVP seeks to prevent or reduce. Remote work raises issues because employees who perform all their duties remotely are not exposed to those risks and cannot transmit the virus to others in the workplace.

[156] In *Canada Post Corporation*<sup>75</sup>, the arbitrator summarizes previous decisions and concludes, consistent with the prevailing trend, that applying a mandatory vaccination policy to remote employees who are required to attend the workplace occasionally is reasonable, but that it is not when an employee works fully remotely with no probable return to the office. In the absence of any health and safety benefits in the workplace—that these unvaccinated employees do not visit—the economic consequences associated with administrative unpaid leave clearly outweigh the employer's interests.

[157] The probability of a return to the office is, therefore, the determinative criterion for warranting the application of the policy to employees working remotely. The evidence must be sufficient; a mere possibility is not<sup>76</sup>. A probable return may be established either by the procedures established to meet operational needs at the time the policy was implemented or by the employer's decision to resume normal in-person operations.

[158] It has long been recognized that the employer has the prerogative to determine whether remote work is appropriate, to assess its effectiveness, and to decide when a broad return to normal should occur<sup>77</sup>. In *Elexicon*<sup>78</sup>, the arbitrator acknowledged that it is for the employer to make that determination but held that so long as in-person work is not required,

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<sup>74</sup> *Elexicon Energy Inc.*, *supra*, note 17.

<sup>75</sup> *Canada Post Corporation*, *supra*, note 21, para. 82 et seq.; see also *Association des ingénieurs et scientifiques des systèmes spatiaux (AISSS) and MacDonald, Dettwiler and Associates Corporation (MDA)*, (*Vaclav Rosbek and another*), (T.A., 2025-03-31), 2025 QCTA 113, SOQUIJ AZ-52109588, 2025EXPT-798 (*Amal Garzouzi*).

<sup>76</sup> *Id.*, par 94 et suivants.

<sup>77</sup> See in particular *Alectra Utilities Corporation*, *supra*, note 17, at 23.

<sup>78</sup> *Elexicon Energy Inc.*, *supra*, note 17.

it is unreasonable to apply the consequences of non-compliance to remote work employees. I endorse that conclusion.

[159] At Bell Canada and other affiliated Employers, employees were assigned to remote work under various conditions. Mandating vaccination was reasonable in case of occasional or scheduled attendance at the office. However, several others worked exclusively remotely with no probable return to the office; therefore, it was unreasonable to place them on administrative leave. I now explain these findings.

**A) Employees working remotely in a hybrid mode or with occasional office attendance**

[160] It was cautious and reasonable to apply the MVP to employees whose working conditions required occasional or regular attendance at the office<sup>79</sup> depending on operational needs. These working conditions were not challenged when implemented, but rather when unpaid leave was announced to employees who wished to avoid vaccination. As explained before, Employers were not required to remove on-site duties inherent to the position to shield employees from the consequences of refusing to comply with the vaccination requirement.

[161] The following cases illustrate employees assigned to remote work with a probable return to the workplace or with scheduled in-person attendance:

- Werner Prochnau, a BTS technician assigned to the documentation team (grievance 0098-2022-0162), had been working remotely since the beginning of the pandemic but was occasionally required to attend the office to collect equipment needed to perform his tasks. He also held a residential repair technician position and remained qualified to perform that work. Bell expected him to return to that team when needed, which had already occurred and continued to be anticipated.
- Roosevelt Jr. Riboul, Central Office Technician 1, Bell Canada, grievance 8284-0048-O, had a weekly on-site presence built directly into his schedule.
- Martin Poirier, technician at the Switching Network Operation Center (SNOC), Bell Canada, grievance 82-84-0019-O, worked under a hybrid schedule that included regular on-site attendance according to uncontradicted evidence from his manager, Martine Nadon.
- Andre George (grievance 25-712-2021), Business Technician at Bell Canada, Mississauga Campus, was responsible for technical support, troubleshooting, and service restoration. In his team, response times for reactive (customer-initiated) or proactive (system-detected) tickets could be as short as 15 minutes, with resolution typically required between two and sixteen hours. A probable return to the workplace was established based on a known directive requiring employees to report to the office if a connectivity outage prevented remote access to employer systems for more than two hours. The manager's testimony that employees were aware of this requirement was not contradicted by the Union.

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<sup>79</sup> *Canada Post Corporation, supra*, note 21; *MDA, (Garzouzi), supra*, note 77.

[162] Accordingly, the ultimate outcome of grievances involving employees who were working remotely with a probable return to the office depends either on the general conclusions reached elsewhere in this award or on other specific issues raised, such as a human-rights-based exemption.

***B) Employees exclusively assigned to remote work (fully remote employees)***

[163] The grievances filed by employees exclusively assigned to remote work are, by contrast, well founded. Because these employees had no probable contact with the workplace, colleagues, or customers, they were not exposed to the types of risks the MVP sought to mitigate. I conclude that Employers could not reasonably place these employees on unpaid administrative leave as of February 1.

[164] The evidence is incomplete regarding the implementation of the Workways program before the MVP was suspended on June 30, 2022, and, in fact, indicates that their working conditions remained unchanged. Accordingly, the measures imposed on them must be fully set aside, while the remaining grievances must be determined on a case-by-case basis.

**(i) The Improbability of a Return to the Workplace as of February 1, 2022**

[165] The Union established that three employees selected as representative cases had been performing their duties remotely since the start of the pandemic, with no requirement or probable return to the office up to the eve of their administrative unpaid leave, in accordance with their managers' instructions.

[166] These employees were Alexandre Gauthier, a 9-1-1 Assistant at Bell Canada (grievance 6003-2022-0013), Julie Lebreux, a Customer Service Representative at Bell Canada (grievance 6000-20227-0007), and Ifrah Maca, Applications Support Assistant at Bell Canada (grievance 6001-2022-0005). Bell did not contradict their testimony regarding their working conditions at the time the MVP was applied in the winter of 2022. I therefore conclude that their return to the workplace at that time was unlikely.

[167] Bell argues that these employees might have been required to report to the office in the event of a power outage, unstable VPN access, or for performance monitoring. I share the view that, absent a specifically articulated expectation that the employee reports to the office within a defined timeframe, the mere possibility of unforeseen events does not meet the standard of a probable return to the workplace<sup>80</sup>. The testimony of a manager, mentioned earlier, regarding his department's expectations for restoring service in the event of an outage<sup>81</sup>, does not allow the inference that the same applied across all Bell employees. Nor does it contradict the affirmative testimony of an employee from another department (like those mentioned before) that no requirement to report to the office has been communicated. Performance management does not entail a probable return to the workplace where such issues have not previously been raised. Nor can the possibility of future meetings at the office.

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<sup>80</sup> *Canada Post Corporation, supra, note 21,*

<sup>81</sup> Teddy Suyon, Senior Manager, Operation Support.

[168] Granted, the expectations of a mandatory return to the office under the Workways program could have influenced the analysis for these fully remote employees, since it requires, at minimum, two monthly on-site attendance and an in-person monthly meeting for the remote profile, and two days per week in the office for the mobile profile. What, then, was the situation as of February 1, 2022, when the administrative leaves were imposed?

[169] According to Ms. Palov, management's plan was to implement the MVP concurrently with the Workways program, which was designed to govern a broad mandatory return to the office. As long as attendance remained voluntary, employees concerned about infection could choose to continue working remotely. The objective, from a workplace-health perspective, was that when employees would be required to return to the office and work alongside colleagues in person, the MVP would ensure a safe work environment.

[170] In its December 2, 2021, communication, Bell indeed announced that a mandatory return for all employees would take effect on February 1 and that unvaccinated employees would be placed on unpaid leave. The message stated that the measure would apply to all employees regardless of profile or work location, as "our business requirements may include on-site presence when needed." In her testimony, Ms. Palov explained that this statement referred to the expectations associated with the Workways profiles, which Bell intended to apply as of that date.

[171] However, this broad mandatory return was postponed indefinitely in a January 10 message due to the deteriorating public-health situation caused by Omicron. That same message further specified that, until Workways was implemented, "team members must continue to work from home (...) their presence in the workplace is not required (as determined by their manager)." Even voluntary presence was not permitted, as confirmed in a February 17 message announcing that voluntary attendance would resume only at the end of that month.

[172] Departing from its initial plan, Bell nevertheless placed all unvaccinated employees—including fully remote employees—on unpaid leave as of February 1, even though no on-site presence was then probable or foreseeable for them.

[173] The extensive evidence heard for each representative case demonstrates that operational needs requiring on-site presence had been established and communicated by managers well before the February 1 deadline. Employee testimony regarding instructions to work exclusively from home was corroborated by union representatives and, importantly, not contradicted by employer evidence. Moreover, voluntary return to the workplace remained prohibited and was not authorized until February 28.

[174] Given prior directives to fully remote employees, there had to be at least some evidence of a change in management's instructions in order to conclude that a return to the office was probable as of February 1, 2022. There was none. By disconnecting the MVP from the mandatory Workways return-to-office program—both designed to operate together—Bell acted arbitrarily, thereby losing any reasonable foundation for placing unvaccinated employees working exclusively remotely on unpaid leave. The situation is

therefore even clearer than *Elexicon*<sup>82</sup>: not only were fully remote employees placed on unpaid leave before any return to the office had been decided, they were also prohibited from attending the workplace at that time.

[175] Bell attempted to provide a rationale for including this group by arguing that Ms. Palov testified that the administrative leave was intended to give additional time to reconsider their personal reasons and comply with the MVP. However, the witness described the step-by-step approach applied to all employees; she was not explaining the reasons for including employees exclusively assigned to remote work. The rationale for doing so, regardless of their work location and duties, lies in the December 2, 2021 communication, which, according to the same witness, referred to the operational needs associated with the Workways profiles. Since implementation of the mandatory aspect of that program had been postponed indefinitely, it does not support the finding of a probable return to the office for employees working exclusively remotely. Bell therefore acted arbitrarily in placing them on unpaid leave on February 1, and I find that action to be unreasonable.

**ii) The unlikelihood of a return to the office until the vaccine mandate is suspended**

[176] Because unpaid leaves were imposed until April 30 and then extended until the vaccination requirement was lifted, it is necessary to determine whether a return to the office had become probable in the meantime. I address this now for greater clarity.

[177] The evidence is insufficient regarding a broad mandatory return under the Workways program before the suspension of the MVP. Without presuming what may have occurred elsewhere, the evidence in Bell Canada and Expertech cases demonstrates that changes to attendance directives—where such changes were made—were implemented no earlier than June 22, or, in some instances, in July 2022.

[178] I begin with corporate communications and will then turn to what happened in the cases heard.

[179] As discussed earlier, attendance at the office was prohibited until February 28 except when necessary and voluntary attendance was permitted only as of that date—four weeks after unvaccinated employees had been placed on unpaid leave. Since voluntary attendance does not impose any obligation on employees, this measure is insufficient to establish the probability of a return to the office for an exclusively remote employee.

[180] The February 17, 2022, email announced the “planned” launch of the Workways program on April 4, with further details to follow. Ms. Palov confirmed this announcement in her testimony but provided no particulars whatsoever, leaving a void concerning the promised details, especially those related to implementation and timing.

[181] The Workways program assigns managers the responsibility for carrying it out, as emphasized by the union, and provides guidance. This role includes defining attendance expectations and communicating them to employees. Ms. Palov acknowledged during cross-examination that employees were supposed to receive communication from their manager detailing how the program would apply to them.

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<sup>82</sup> *Elexicon Energy inc., supra*, note 17.

[182] In argument, no evidence was identified, despite the Board's request, to substantiate the assertion that employees had been informed of any requirement to report to the office as of April 4. I found no general communication from BCE in the extensive documentary record, setting out the actual steps to be followed, let alone any management directive requiring all employees to attend the workplace in accordance with their assigned profiles. Some Bell Canada communications filed by the Union<sup>83</sup> indicate that Workways was being implemented and that, as a result, more employees were now present in the office. However, nothing in those documents reflects any requirement to attend the workplace.

[183] To the contrary, in two exclusively remote sample cases—one at Bell Canada and the other at Expertech<sup>84</sup>—direct evidence shows that mandatory attendance expectations tied to the employees' profiles were introduced on June 22 and mid-July, respectively. In two other Bell Canada cases<sup>85</sup>, employees were returned to remote work upon reinstatement in July and August after the vaccination mandate was lifted, with no scheduled presence required. No evidence to the contrary was presented by Bell, aside from the corporate plan itself. Moreover, the assertion that the Workways program had been broadly implemented in April is contradicted by Teddy Suyono, Senior Manager at Bell Canada Mississauga campus, who testified that he implemented profile-based attendance for his team only in July 2022, "after the pandemic," as he stated in response to Bell's questions.

[184] Ms. Palov indicated that bringing remote employees back to the office proved difficult, despite expectations expressed to managers. Bell argues that "the fact that certain individuals or teams did not comply with corporate expectations should not lead to any conclusion regarding the analysis of the rollout of the vaccination policy between February 2022 and June 2022" [Translation].

[185] I strongly disagree. I find no foundation for the suggestion that managers or employees in the cases heard failed to comply with expectations communicated by their employer.

[186] In any event, the notion that BCE's corporate expectations alone would be sufficient to establish the probability of a return to the office for all employees in the group does not withstand scrutiny. Although Employers acted under BCE's general direction in implementing the MVP, each one remains solely responsible for managing its own employees and enforcing the policy as it applies to them. The grievances have been grouped for convenience, but each one is directed at a specific employer, not at BCE. It is that employer's decisions—taken within its own organization—that are at issue. What is engaged here is an alleged change in that employer's organization of work, as a basis for administrative leaves. BCE's corporate expectations regarding attendance are insufficient;

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<sup>83</sup> S-121.

<sup>84</sup> Alexandre Gauthier, Bell Canada (grievance 6003-2022-0013) and Natacha Duquette, a materials handler at Expertech (grievance B8284-002-F). The latter was never placed on leave because she was vaccinated.

<sup>85</sup> Julie Lebreux (grievance 6000-2027-0007) and Ifrah Maca (grievance 6001-2022-0005).

what matters are the expectations of the employer in question, and particularly those communicated by its own managers.

[187] Accordingly, the evidence must convincingly establish that these corporate expectations were implemented locally for the grievors. That is not established in the following cases:

- Alexandre Gauthier, 9-1-1 Clerk at Bell Canada (grievance 6003-2022-0013), placed on unpaid leave while working exclusively remotely with no probable return to the office. His first required office day in accordance with his profile occurred on June 22, 2022. No contrary evidence was presented by Bell. I therefore conclude that the probable return date begins on that day.
- Julie Lebreux, Customer Service Representative at Bell Canada (grievance 6000-2022-0007), placed on unpaid leave while working exclusively remotely with no probable return to the office. After reinstatement on July 18 following the suspension of the MVP, she was again assigned to exclusively remote work. No contrary evidence was presented by Bell regarding implementation of the Workways profile within her team. I conclude that no probable return existed before the suspension of the policy.
- Ifrah Maca, Application Support Clerk at Bell Canada (grievance 6001-2022-0005), placed on unpaid leave while working exclusively remotely with no probable return to the office, reinstated in August 2022. Following the suspension of the policy, the department was restructured, the team's dedicated offices were eliminated, employees retrieved their belongings and thereafter had to reserve shared spaces as needed. No contrary evidence was presented by Bell regarding implementation of the minimum required attendance during or after his absence. I find that any return was voluntary.

[188] These grievances are upheld. The unpaid leaves are annulled, and the employer must restore all rights and reimburse lost wages with interest. I remain seized over compensatory damages if claimed.

[189] Given the reasons set out above, the reasonableness of the application of the MVP to remote work employees must be determined on a case-by-case basis for the remaining grievances, according to the operational needs previously determined by local management and the actual implementation of the Workways program within the relevant team between April and June 2022.

[190] Finally, I noted an exceptional situation in reviewing the evidence, namely the case of Cédric Dansereau, technician, grievance 77-382G, BTS.

[191] This employee had been reassigned following a workplace accident while the vaccination requirement was in effect. According to his manager's testimony, a remote work assignment was excluded on the grounds that the MVP applied in full in such circumstances. However, the evidence and submissions are insufficient to reach a finding. This matter is therefore referred to the second phase of the process if the parties are unable to agree on the employer's duties for accommodation, which may differ in this context.

## **2.2.8 Reasonableness of the application of the MVP in other circumstances**

### ***A) General comments***

[192] It is well established in the previous decisions that it is reasonable and cautious to mandate vaccination for employees who work in an office, at an indoor facility, or who interact in person with customers. Accordingly, Employers reasonably applied the MVP to employees whose duties required them to be in any of these situations targeted by the policy, even occasionally or incidentally.

[193] It must be noted, however, that the MVP does not mandate vaccination for employees working outdoors. The prevention of risks associated with interactions between employees working collaboratively outdoors is not mentioned in the MVP or in the related documentation filed in this case. Bell cannot retroactively add an obligation that is not provided for in the policy.

[194] Consequently, I will disregard the evidence relating to interactions between employees working together outdoors (for example, for moving cable reels) and limit my analysis to the three situations listed in the MVP: working in an office, working in a Bell facility, or interacting in person with Bell customers.

[195] None of the positions in the sample cases involved work performed entirely outdoors, such that it would fall outside the scope of the MVP. This conclusion holds even when considering preventive protocols, such as home-dispatch arrangements that exempted employees to report to their assigned location at the beginning and end of their shifts. It was suggested that “advance-drop” work performed by installation technicians fell into this category, but no evidence was presented regarding any technician assigned to this work who was placed on administrative leave. The job was described only in very general terms by a technician who did not perform it and requested accommodation. Whether the MVP was reasonably applied to an employee holding such an assignment is an issue that could be included among the unresolved matters to be addressed at a later stage, if necessary.

[196] The MVP is preventive in nature, and the reasonableness of its application depends on what is expected of an employee in relation to working at an office, a Bell location, or interacting with customers, according to the position held.

[197] The concept of interacting in person with customers must be interpreted broadly. It includes the risk arising from the presence of any person on their premises—users, employees, visitors, children, or vulnerable individuals—whether in a building, facility, or residence.

[198] The duration of past interactions, or the absence of other people on a given occasion, arguments frequently raised by the Union are not a reliable assessment of risk. Work locations and the people present vary depending on assignments and customer needs. Neither employees nor managers can predict that conditions will be the same at the next visit.

[199] Given the preventive nature of the MVP, as soon as an employee is on a Bell site or at a customer location, the employer may reasonably consider interactions to be probable. Even a technician who estimates working alone 95% of the time spends about 120 minutes

per week around other people or in places where others may be present—and in practice, this exposure is generally higher for most field employees.

[200] Evidence regarding distancing and other protective measures at Bell or customer locations is irrelevant. I have already found that these measures are not sufficient on their own.

[201] Employees are expected to comply with other health and safety rules established to prevent injuries. An employee cannot unilaterally decide to perform work solo to avoid vaccination where health and safety rules normally require work to be performed in tandem. Violating one health and safety rule cannot serve for a refusal to comply with another.

[202] The fact that a customer does not require vaccination to access its premises—for example, a construction site—is not a reason to decline to apply the MVP, since technicians are nonetheless in contact with clients. However, customer requirements that work be performed by a vaccinated employee (often under their own mandatory policy) are relevant because they create an operational constraint for the employer. That said, I agree with the Union that the evidence on this point is too vague and general to be determinative.

[203] Finally, it is unclear when preventive protocols were relaxed for technicians or when the return to normal practices in Bell's facilities became mandatory in the spring of 2022. The plan to do so was only vaguely referenced.

### ***B) Sample Cases heard***

[204] **Linepersons (monteurs de lignes)** are responsible for constructing telecommunications networks. **Splicers** connect fibre or copper cables between terminals and junction points, working on aerial networks or in underground infrastructure such as access vaults. These employees work primarily outdoors, but not exclusively.

[205] In *Alectra Utilities Corporation*<sup>86</sup>, for example, an Ontario electricity distributor, the arbitrator found mandatory vaccination reasonable for employees working outdoors on the network, relying mainly on the fact that they also interacted inside employer facilities at the beginning and end of their shifts.

[206] The same conclusion is appropriate in the present case even though most technicians were home dispatched, exempting them from these in-person contacts. The reason is that linepersons and splicers also work in commercial buildings, residential buildings, construction sites, and condominium towers in the presence of other workers in some areas and they share common spaces (washrooms, stairwells, elevators). They sometimes must seek authorization from property owners to access private areas or interact with safety coordinators at job-site trailers, forepersons, managers escorting them to technical rooms, and occasionally with other trades. These interactions are set out in their job descriptions. Some splicers also work on copper cables in tandem inside access vaults and all may be required to enter central offices and technical rooms located in office buildings. It follows that the MVP was reasonably applied to these employees.

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<sup>86</sup> *Alectra Utilities Corporation*, *supra*, note 17, par. 8 et 22.

[207] The linepersons concerned include:Thimothé Bessette, grievance X-75-019-G; Rémi Nantel, grievances X8284-26G, X8284-58G, Expertech. The splicers heard include Patrick Dubé-Bourgeault, grievances X0745-008G, X0745-018G; Marco Roy, grievance X75-009G; Alexandre Martin, grievance X8284-030-G; and Sebastian Rodriguez, grievance X8284-036G, Expertech.

[208] **Cable pullers** install Bell's network in new buildings, mainly condominium towers, including commercial and office space. They differ from splicers because their work is generally performed indoors, at least for the team in the representative case heard. They install the infrastructure for the internet and telephone services. Their work includes pulling and installing riser cables from the main technical room, through technical closets on each floor, to customer units. They install copper cable inside units, secure it, and install wall plates. Their job description requires them to interact with customers, communicate with dispatch, technicians, and the project lead. They work alongside colleagues—often at a distance, but sometimes within six to ten feet while performing physical tasks—and in the same locations as other trades (electricians, painters, drywallers), sharing common facilities (elevators, washrooms, stairwells). The application of the policy is reasonable in these circumstances.

[209] This position was described by Andrew Stephenson, manager of Calvin Dutton, BTS, grievance 2022-1996-175.

[210] **Installation, repair, and maintenance technicians** serving commercial, government, and residential customers perform part of their work outdoors, but not entirely: they must enter customer premises to complete installations or repairs, requiring in-person interactions to meet customer needs. They may visit multiple customers in a single day. According to uncontradicted testimony, self-installation by residential customers was possible in only 25% of cases and was a temporary measure. Since their work requires periodic in-person interactions with customers, the application of the policy is reasonable in these circumstances.

[211] For example, Francis Paquin, grievance 75-006O, senior technician at Bell Canada, grievance 75-006O, testified that 50% of his work was outdoors and the remainder took place inside government customer premises, including hospitals and long-term care homes, where he wore required personal protection equipment. This assessment is consistent with other testimonies.

[212] The installation technician role was described by François Dussault-Clermont and Caroline Côté, BTS managers, whose testimony covered the representative cases of Cédric Dansereau, grievance 77-382G; Samuel Cook, grievance 93-333G; and François-Xavier Martel, grievance 81-2022-0013.

[213] The case of David Hervé, Level 1 Business Technician at Bell Canada, grievance 75-005O, is unique. He served as a health and safety representative on a committee and was fully released from his regular duties. His reporting location was a Union office in Quebec City. His representative role nevertheless involved visiting Bell facilities equipped with transmission systems to verify lighting, fire extinguishers, and access points. Some of these sites were also workplaces for office employees, although some of the latter worked

remotely. However, Mr. Hervé remained a Bell employee who had to visit Bell locations, making mandatory vaccination reasonable. The result would be the same even if union representatives were treated as third parties, since the MVP requires that anyone visiting a Bell location be vaccinated. Had M. Hervé been unable to perform his union duties, he would have returned to his technician role requiring contact with customers, leading to the same conclusion.

[214] The **Central Office Attendant Level 1** (préposé bureau central), at Expertech, installs and maintains electrical power systems (DC) for telecom equipment in Bell's centrals. The job requires handling heavy batteries (450 to 800 pounds) and pulling cables over long distances to mount them on steel frames. Such work is almost always performed in tandem because of the complexity or weight involved, increasing transmission risk, according to the Union's expert. Attendants work in different types of central facilities, ranging from metal huts to underground vaults (VEC), semi-buried structures (WIC), and large urban central offices. The latter may include administrative offices and security personnel. The Employer acted reasonably in applying the MVP to these employees. Mathieu Labelle, grievance X8284-038G, described this position.

[215] The **Logistic Attendant** provides an example of full-time work in a Bell facility. Dustin Neff, a BTS employee, grievance 2022-43-06, worked with a colleague holding the same job title in a warehouse-type environment containing equipment stored on shelves or on the floor, along with their workstations and other shared spaces within the building. The location was also likely to be visited by other employees and the manager. Given these circumstances, the Employer acted reasonably.

### **2.3 Reasonableness of the application of the MVP from April 20, 2022, until its suspension on June 30, 2022**

[216] We have seen that the MVP and its application are reasonable during the initial phase of its implementation and during the first period of unpaid administrative leave, except for employees working exclusively remotely. I am now addressing the final stages of the MVP's application, from April until its suspension in June 2022.

[217] As a reminder, notices of unpaid administrative leave state that the employment will be terminated without further notice or compensation if the employee is still not vaccinated at the end of their administrative leave on April 30, 2022. Ten days before that deadline, on April 20 or 21, Employers adjusted course by informing employees that their administrative leave would be extended indefinitely. The threat of dismissal was thereby permanently withdrawn, but the vaccination requirement remained. It was suspended on June 29, 2022, and the following day the employees on administrative leave were invited to contact management to resume work.

[218] In the background, public health conditions gradually improved over this period.

[219] The Union notes that, beginning in March, several provincial governments lifted measures restricting access to activities, and gathering rules were relaxed. It argues that it was unfair that unvaccinated employees could go to restaurants and shops without restrictions but were still prevented from working for months. It submits that by that time,

two-dose vaccination—completed by January 31 and often earlier—had lost its effectiveness. A third dose was needed for protection, yet the MVP did not require one, as Bell management clarified in communications to employees in February and May 2022<sup>87</sup>. Maintaining the vaccination requirement to resume work was therefore arbitrary and lacked a scientific basis.

[220] Bell reiterates that hindsight analysis must be avoided. While the situation had improved, public health authorities continued to fear the emergence of new variants. The group remained aligned with the federal government and suspended its own policy when the latter ended its mandate and withdrew its expectations toward federally regulated employers, including its plan to adopt a regulation on the matter.

### **2.3.1 Situation late spring 2022**

[221] In April 2022, the Public Health Agency of Canada (PHAC) reported that transmission could peak in certain regions. Hospitalization rates remained high in several areas, but intensive care admissions were low. A sub-lineage of Omicron, less harmful than prior variants, accounted for most sequenced samples. Public health authorities were nonetheless preparing for the emergence of new variants of concern.

[222] During the spring, Dr. Letellier's view that vaccination was ineffective at preventing transmission under the Omicron variant was confirmed. Dr. Loeb testified that studies, all retrospective in nature, had been published, including one on April 29.

[223] PHAC stated that because Omicron and its sub-variants tended to evade immune mechanisms, the vaccine was less effective than against prior variants. However, being up to date on vaccination—meaning with a booster dose—remained strongly recommended to prevent severe outcomes from the disease. This applied equally to unvaccinated individuals, and to those who had previously contracted COVID-19.

[224] By June 2022, conditions had generally improved. PHAC reported that transmission rates were showing signs of decline. Hospitalization rates remained high, but trends in severe cases were decreasing. While the reduced effectiveness of vaccines in preventing transmission remained, their benefit in preventing severe outcomes continued to be significant.

[225] As the situation was evolving, some protective measures were relaxed by Employers at Bell's initiative. For example, documentary evidence shows that on May 23, 2022, Bell Canada lifted restrictions on gatherings, elevator distancing, and the mask requirement in its offices, while maintaining masking for customer interactions until June 13. In that same message, it strongly recommended a booster dose for all employees.

[226] The day after the deadline set by Bell Canada in that message for the remaining masking requirement, i.e., on June 14, 2022, the federal government withdrew all its vaccination mandates in the transportation sector and for its employees and suppliers. Likewise, it lifted its expectations for employers under its jurisdiction and announced that no regulation would be adopted.

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<sup>87</sup> For example: S-103, tab 52.

[227] On June 29, 2022, Bell decided to suspend the vaccination mandate. The next day, all Employers wrote to employees on administrative leave to invite them to resume work. The evidence shows that employees were reinstated in July 2022.

### **2.3.2 Reasonableness of the MVP late spring 2022**

[228] In my view, the MVP remained reasonable until it was suspended.

[229] Indeed, some employers withdrew their policies earlier than others. The reasonableness standard recognizes that more than one course of action can be appropriate when management exercises its prerogatives.

[230] In case law, arbitrators generally upheld mandatory vaccination policies still in effect in June. Based on a meticulous review of evolving scientific data, some concluded that a precautionary approach remained warranted until that point, but no longer. Two arbitrators even upheld mandatory vaccination in September and further on.

[231] There is no basis to depart from that approach here. Bell reasonably remained aligned with the federal government, which maintained its expectations until mid-June based on the PHAC analysis.

#### **A) Review of arbitral awards on the reasonableness of vaccination policies from April to June 2022**

[232] I begin my review with *Alectra Utilities Corporation*<sup>88</sup>, because it involves a large company providing an essential electricity distribution service in Ontario. As in the present case, some employees worked outdoors installing and maintaining infrastructure, while others were assigned to remote work. The vaccination rate had reached 97% within the company. The policy was introduced in October 2021 and was still in effect as of June 9, 2022, when the arbitrator issued the award. The same issues were raised by the union: Omicron was more contagious; protection from the primary vaccine series waned over time; vaccines no longer prevent infection; there was no legislative requirement; public restrictions were lifted on March 1 in Ontario. The arbitrator found that even though conditions had improved, the vaccination requirement remained reasonable at that stage of the pandemic.

[233] In *MDA*<sup>89</sup>, issued in 2024, Arbitrator Johanne Cavé found that the vaccination requirement had been reasonably applied until it was lifted in June 2022, given the exceptional, real, and urgent situation given the circumstances prevailing at the time.

[234] *Coast Mountain Bus Co.*<sup>90</sup> is a British Columbia employer whose drivers interact with the public. Unifor challenged the reasonableness of the policy beginning in April 2022, also arguing that provincial health authorities had relaxed public health measures. Mask requirements for drivers had been lifted in March 2022. The union submitted that unvaccinated employees posed risks similar to those posed by vaccinated employees because vaccine efficacy wanes over time. The employer maintained the policy to reduce

<sup>88</sup> *Alectra Utilities Corporation*, *supra*, note 17.

<sup>89</sup> *MacDonald Corporation, Dettwiler and Associates*, *supra*, note 8, para. 77.

<sup>90</sup> *Coast Mountain Bus Co.*, *supra*, note 8.

the risks of transmission and severe illness, relying on provincial public-health guidance and data showing that vaccination reduced the risks of severe disease, hospitalization, and death. On this basis, the arbitrator decided the policy was still reasonable in September 2022, when the grievance was dismissed.

[235] In *BC Rapid Transit Co.*<sup>91</sup>, the union similarly argued that the policy should have been withdrawn after April 8, 2022, when public restrictions such as vaccine passports were lifted. The arbitrator concluded that the risks had not decreased as of April 2022 because public data showed an increase in cases at that time—an argument also submitted by Bell. He found that the policy was still reasonable in September 2022. In this regard, he departed from the contrary view previously expressed in *FCA Canada Inc.*<sup>92</sup> that vaccination no longer offered sufficient protection by June 2022 to warrant a condition of employment. The arbitrator explained his decision to follow *Coast Mountain Bus Co.*<sup>93</sup> because it involved similar activities and that British Columbia health authorities continued recommending two-dose vaccination to reduce transmission risks, severe illness, and death.

[236] It is useful to review the *FCA Canada Inc.*<sup>94</sup> decision, mentioned in the previous case, because it is the first, within the substantial body of case law on this issue, finding that a mandatory vaccination policy, valid when introduced, later became unreasonable<sup>95</sup>.

[237] FCA is a subsidiary of Stellantis. Its policy was implemented nationally across all facilities, including manufacturing and assembly plants, parts-distribution warehouses, research and development, business and training centers as well as offices. The arbitrator found that by June 2022, it had become unreasonable to require a primary two-dose vaccination series as a condition of employment because scientific data showed that vaccines had negligible efficacy in preventing Omicron transmission, even though they continued to protect against severe outcomes of infection.

[238] However, the arbitrator rejected the union's argument—also made by Unifor in this case—that such a conclusion could have been reached much earlier. He explained his decision in the following manner:

107. Having regard to all of the above, I find that the Policy when introduced was reasonable and continued to be reasonable in its application. However, after careful review and not without considerable personal reservation, I hereby find that a COVID-19 vaccine mandate defined as requiring two doses (of a two-dose vaccine) is no longer reasonable based on the evidence supporting the waning efficacy of that vaccination status and the failure to establish that there is any notable difference in the degree of risk of transmission of the virus as between the vaccinated (as defined in the Policy) and the unvaccinated. Rather, the evidence supports a conclusion that there is a negligible difference in the risk of transmission with respect to Omicron

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<sup>91</sup> *British Columbia Rapid Transit Co. and CUPE, Local 7000 (Mandatory Vaccination Policy)*, 2022 CarswellBC 2902 (Randall J Noonan).

<sup>92</sup> *FCA Canada Inc. v. Unifor, Local 195 (COVID-19 Vaccine Mandate Grievance)*, [2022] O.L.A.A. No. 187 (Nairn).

<sup>93</sup> *Coast Mountain Bus Co.*, *supra*, note 8.

<sup>94</sup> *FCA Canada Inc.*, *supra*, note 8.

<sup>95</sup> As Arbitrator Glass explains in *Purolator*, *supra*, note 26, discussed below.

between a two-dose vaccine regimen and remaining unvaccinated. Under the definition in the Policy, there is no longer a basis for removing unvaccinated employees from the workplace. While the Union would argue that such a conclusion was available in December 2021, I disagree. More evidence was required of both the waning efficacy of the two-dose regimen against Omicron and the relative risks of transmission before that conclusion could responsibly or reasonably be drawn, given the history of this virus. Where matters of health and safety are involved, it is not unreasonable to err on the side of caution.

[239] Finally, in *Purolator*<sup>96</sup>, the employer maintained its mandatory vaccination policy until April 2023, and the union similarly challenged its reasonableness. Unvaccinated employees were placed on administrative leave or terminated. The arbitrator found the policy unreasonable after June 30, 2022.

[240] Although client requirements were noted, the decision rested primarily on a careful analysis of the evolving epidemiological, scientific, and jurisprudential landscape. The arbitrator relied in particular on *FCA Canada Inc.*, emphasizing that it marked a turning point in June 2022.

[241] Arbitrator Glass rejected the union's argument that, as of January 2022, the policy no longer had sufficient scientific basis to warrant a mandatory vaccination requirement given its impact on employees. On the contrary, he found that the precautionary principle remained appropriate throughout winter and spring 2022, given the prevailing uncertainty. It took time for a clear pattern to emerge regarding the effectiveness of vaccines against Omicron. A major study—also referenced here—was published at the end of April 2022, and others showed that beyond 25 weeks, vaccine efficacy declined markedly and that a two-dose regimen had a negligible impact on preventing Omicron transmission. On the other hand, the arbitrator also rejected Purolator's argument that vaccination's ongoing protection against severe outcomes could, by itself, justify maintaining the policy, as this risk is not inherent to the workplace. He concluded that once the science clearly established that vaccination no longer prevented the transmission of infection, the precautionary principle could no longer serve as a basis for the reasonableness of the policy.

[242] Purolator, like Bell, is a federally regulated employer subject to the federal government's expectations concerning vaccination. The arbitrator therefore considered the federal decision of June 14, 2022 (effective June 20, 2022) lifting all mandatory vaccination requirements. The corresponding announcement stated that the decision was grounded in scientific indicators regarding the evolution of the virus, the epidemiological situation, and the state of vaccine science—aligning with the developments mentioned above. This announcement was a decisive development, and the employer could not reasonably ignore it.

[243] Ultimately, June 30 was determined to be the endpoint for the policy's reasonableness. To reach that conclusion, arbitrator Glass considered that, in addition to the time needed for the accumulation of scientific evidence, an observation period was necessary to confirm the emerging trend.

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<sup>96</sup> *Purolator, supra*, note 26.

[244] On judicial review, the Superior Court confirmed that scientific uncertainty surrounding the virus justified a precautionary approach for as long as it persisted—but no longer—and held that the arbitrator could reasonably find that, as of late June, the employer’s policy had become unreasonable<sup>97</sup>.

### ***B) Application to the MVP***

[245] The takeaway from this review is that these arbitrators reached a convergent view: vaccine mandates requiring two primary doses as a condition of employment remained reasonable until June 2022. There is consensus on this point, and the Union has not cited any authority to the contrary.

[246] Their disagreement concerns the reasonableness of maintaining the vaccination requirement thereafter, and whether the protection still afforded against severe outcomes of the disease is sufficient to warrant a vaccine mandate. That question does not arise in this case, since Bell acted on the signal sent by the federal government’s decision to withdraw its expectations and its mandatory vaccination requirements.

[247] I agree that the determination of this inflection point is a discretionary assessment. It is based on a set of cumulative considerations, including the signal sent by the federal government through its June 14 announcement, which served as the decisive catalyst. From that signal, Bell acted within a reasonable timeframe in reaching its June 29 decision, communicating it, and initiating the reintegration process the next day.

[248] I therefore conclude that the MVP remained reasonable until June 29, 2022, and the Union’s arguments to the contrary are dismissed.

## **2.4 Issues relating to the application of the MVP to employees vaccinated or immunized between February 1 and June 29, 2022,**

[249] Outstanding are the specific issues raised concerning the application of the MVP between February 1 and June 30, 2022. I first address the adjustments implemented by Bell on April 20 and their impact on employees who became vaccinated during that period. A related matter concerns the 14-day waiting period required after the last dose before reinstatement. Finally, natural immunity must also be discussed.

### **2.4.1 Threat of termination**

[250] Employees who became vaccinated while on unpaid administrative leave, acting under the fear of losing their jobs, stated that they felt misled when it was extended and when Bell ultimately withdrew the vaccination requirement<sup>98</sup>. These remarks were made repeatedly during the hearing, and echo the claims related to the coercive effect of the policy. The distinction here, however, is that the employees yielded to the threat of termination, a threat that was ultimately withdrawn a few days before it was scheduled to take effect.

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<sup>97</sup> *Purolator* (BCSC), *supra*, note 26.

<sup>98</sup> For example, Alexandre Gauthier and Samuel Cook.

[251] I begin by recalling the fundamental requirements of civil liability that must be met in order to uphold these allegations. At the core, it must be shown that a wrongful act was committed, which engages liability for the damage that directly flows from it. There must therefore be such a claim for damages in the first place and, even before considering whether the vaccination itself may have caused harm, it must also be possible to find that the Employers committed a wrongful act.

[252] The resentment most often expressed stems from the Employers' about-face, which is said to be the wrongful act at the source of the harm. Yet, for the withdrawal of the terminations to be wrongful, the continued employment of unvaccinated employees would also have to be wrongful: these are two inseparable faces of that specific decision.

[253] I find that maintaining the employment of unvaccinated employees was plainly not a wrongful act. This decision is consistent with the unavoidable logic of the protection afforded by collective agreements: the reasonableness of a termination must always be reassessed at the moment it is implemented. Bell and Employers adjusted their approach to the evolving public health context, as Ms. Palov testified. In deciding to keep unvaccinated employees in their jobs, they exercised sound judgment. The same reasoning applies to the suspension of the vaccination requirement under the MVP, implemented in June at Bell's direction, which is not wrongful toward anyone. These allegations are therefore dismissed.

[254] That said, the threat may have been used abusively in certain circumstances. A relevant example is that of Alexandre Gauthier, Bell Canada, grievance 6003-2022-0013. The employee decided to be vaccinated after being placed on administrative leave. He first sought an exemption to wait for a newly approved vaccine not yet available in Quebec and his request was denied. He was vaccinated on March 17, and he scheduled a second-dose appointment. To do so, he was required to wait eight weeks, which pushed him into June for reinstatement once the additional 14-day period was included. Fearing termination without notice, he made repeated efforts to obtain Bell's position before his second dose. Local management consulted Human Resources but received no clear guidance, and ultimately disclaimed any responsibility for the situation, unable to clarify whether the grievor would lose his job.

[255] On April 5, Mr. Gauthier contacted the disability management team as a last resort, seeking to be treated like the latecomers at the initial implementation of the MVP, who had been granted an extra month to avoid the announced measure (then administrative leave) if they had a second-dose appointment booked later. On April 6, his request was denied as follows:

Hello Alexandre,

We understand your concern and thank you for starting your vaccination process.

You have been notified that due to Bell's launch of its My Job in 2022 program and our intention to return to more normal operations, all team members who have not certified that they are fully vaccinated by January 31, 2022, will be placed on unpaid leave. As of that date, we have not received any indication from you that you intend to comply.

***Unfortunately, we cannot deviate from this policy, and we remind you that if you are still not fully vaccinated or do not wish to disclose your vaccination status to us at the end of your unpaid leave, you will be considered to have violated Bell's COVID-19 vaccination policy and your employment will be terminated without further notice, compensation, or severance pay.***

We understand that you were hoping for a different decision and that this may affect you on a personal level. We would like to remind you that you can contact the Employee and Family Assistance Program (EFAP), which can offer you immediate assistance. (..)

[Bold and italics in the text] [Translation]

[256] In my view, this is an example of wrongful conduct in relation with the application of the MVP.

[257] First, management failed in its basic responsibilities, leaving the employee to navigate from one level to another in search of clarity about how he would be treated, only to have the final decision taken by a team lacking the authority to grant additional time.

[258] Second, the outcome is contrary to the requirements of good faith. Bell granted an extension to latecomers to avoid the least severe consequence for non-compliance—administrative leave. Refusing equivalent treatment in a mechanical manner, on the eve of the most serious measure—termination—is excessive and unreasonable. It is obvious that termination would not have been just and reasonable in these circumstances, as the employee was clearly committed to complying with the policy. Moreover, he worked fully remotely, so granting the same extension would have had no operational impact. This unreasonable application forced the employee to receive his second dose earlier than recommended by public-health authorities, under the needless anxiety of losing his job.

[259] I upheld Alexandre Gauthier's grievance 6003-2022-0013 in the section on exclusive remote work. I hereby determine that this grievor is entitled to compensatory damages, in addition to lost wages and benefits, as claimed. The quantum will be determined at a later phase of the arbitration process.

#### **2.4.2 The 14-day delay after the second dose**

[260] The MVP requires a fourteen-day delay after the second dose in order to be considered fully vaccinated. Employees who began the vaccination process late question the reasonableness of this requirement, as it further delayed their return to work after receiving the vaccine.

[261] In *Reliance Comfort*<sup>99</sup>, mentioned by the employer regarding the overall validity of the policy, the arbitrator nonetheless concluded that the 14-day waiting period after the final dose before an employee is considered fully vaccinated under the policy (thereby delaying their return to work) is unreasonable, as it was not based on solid scientific evidence.

[262] Once again, the experience of Alexandre Gauthier provides an illustration. Although the Union raised the issue, the experts did not address the fourteen-day delay.

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<sup>99</sup> *Reliance Comfort Limited Partnership*, *supra*, note 46, paras. 88-97 and 121-122.

Furthermore, the parties glossed over the subject in arguments. Finally, since Alexandre Gauthiers's grievance is upheld for other reasons, it is unclear if a finding is still needed.

[263] I therefore reserve my decision and invite the parties to refer the matter to me again should this issue require determination. The parties may supplement their evidence at that time.

### **2.4.3 Unpaid Leaves of employees who contracted COVID-19**

[264] Some employees did not meet the timeline set to comply with the vaccination requirement but contracted COVID-19 in the interim. They were suspended for failing to comply with the MVP. They argue that the illness provided them with equivalent natural immunity (or, combined with a vaccine, an equivalent level of protection), or that the illness made it impossible for them to comply with the MVP because of the waiting period imposed by public health authorities before administering a post-infection vaccine dose. They therefore claim to have been treated arbitrarily and abusively.

[265] Both experts addressed this issue. They stated that the illness can confer natural immunity equivalent to vaccination.

[266] Dr. Loeb added that administering a vaccine provides even better protection. However, this latter point cannot be relied upon to justify a vaccination requirement. Equivalence is, however, sufficient to achieve the protective objective of the policy. For the MVP to remain valid, it must be applied consistently. Requiring more of only some employees would be discriminatory.

[267] Natural immunity was raised by employees throughout the application of the MVP as well as by grievors at the hearing. Alexandre Gauthier raised this issue in his abovementioned request for an exemption, but the team responsible for refusing it did not address it. Other employees also raised natural immunity in their testimony: after contracting the illness, they informed their employer as required by protocol and received authorization for leave from their manager. For instance, Ifrah Maca, also an employee of Bell Canada, grievance 6001-2022-0005, contracted COVID-19 twice—on December 15, 2021, and again four days before the administrative leave. He was forced to take leave, although he had told his manager. The latter did not react to this information.

[268] The issue was explored in greater depth in the test case of David Hervé, Business Technician Class 1 at Bell Canada (grievance 75-003-O. He was suspended without pay as of February 1, 2022. Mr. Hervé had also contracted COVID-19 on December 27, 2021, as evidenced by a positive rapid test, which he communicated to his manager. He followed the applicable procedures, including participating in contact tracing by public health authorities and receiving formal instructions on January 2, 2022.

[269] According to the experts, this infection could have conferred natural immunity. However, at the time he contracted the illness, the deadline to provide proof of the first dose had passed, and the waiting period imposed by public health authorities for administering a post-infection vaccine made it impossible for him to receive it before the deadline for the second dose.

[270] Mr. Hervé requested that his administrative leave be postponed on January 31, 2022, on that basis, but his manager refused. The manager nevertheless sent him a link to obtain certification from government authorities, though the nature of that process was not established, as the manager did not testify. The grievor stated that he was unable to meet this requirement because he could not access the site using the link provided. He booked an appointment for vaccination on March 6, 2022, but later cancelled it. He acknowledged being informed that he could be reinstated if he got vaccinated. He testified that he had booked other appointments but did not file proof. However, nothing in cross-examination undermined his testimony regarding the December 27 infection.

[271] I requested the parties to submit additional representations on the subject in light of an arbitral award<sup>100</sup>, which they did. This exercise led me to conclude that the evidence is insufficient for a general finding on this issue, as expected in this first stage of the process, because Bell's position lacks evidentiary support.

[272] Bell argues in its supplementary submissions that the MVP provides for this situation:

Employees whose situation does not meet the definition of full vaccination but who reside in a province where public health guidelines consider them fully protected are invited to contact the disability management group for validation at [an address provided].

[273] However, Bell did not question any of its witnesses on that issue during the hearing, even though the Union raised the matter of natural immunity and introduced evidence regarding that point. No document filed specifically addresses natural immunity, apart from the email from the manager. The latter did not testify to explain why he directed Mr. Hervé to an external authority when the MVP required employees to contact the disability management team for validation. Another manager—Mr. Maca's—did not react to the information provided by his employee. The disability management team provided no information to Mr. Gauthier despite his inquiries.

[274] While I accept that an employee with natural immunity must request recognition for the purpose of complying with the MVP, several fundamental questions remain unanswered concerning both process and substance: Did Bell, in fact, recognize natural immunity, and if so, for one dose or for two—and on what basis? What was the required procedure? Although I can observe that Mr. Hervé did not provide the attestation requested by his manager on what basis was that requirement imposed? Was it still possible to obtain the attestation when the email was sent, one month after the illness?

[275] I therefore reserve my decision on this matter. Its resolution is deferred to the second phase so the parties may supplement their evidence (including expert evidence, if relevant) and submissions. This seems even more appropriate given that COVID-19 is a disease so that, a priori, not being able to obtain a dose of vaccine to comply with the MVP for this reason raises issues similar in nature as the exemptions to be addressed in the next phase.

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<sup>100</sup> *Teamsters Quebec Local 1999 v. Air Inuit Ltd.*, 2024 CanLII 111289 (Dominic Garneau).

## CONCLUSION

[276] In summary, the MVP and its application were generally reasonable until June 30, 2022.

[277] Employers were not required to reorganize work, adjust operational practices, or modify schedules or assignments to shield employees from the consequences of refusing to comply. Unpaid leaves were administrative in nature, unless there were special circumstances. The incentive effect of the announced economic or disciplinary consequences is reasonable, and no wrongful act was committed by extending the administrative leaves indefinitely.

[278] However, Bell and the Employers acted unreasonably in placing employees assigned to remote work exclusively on administrative leave. Bell Canada exercised its rights unreasonably by refusing to postpone the formerly expected April 30, 2022, termination date for an employee engaged in the vaccination process.

[279] This award is issued in both languages. In the event of any discrepancy or interpretive difficulty, the French version prevails.

[280] I remain seized over the implementation of this award, all outstanding issues, and, in full, all grievances other than the test cases presented at the hearing.

## AWARD

[281] For these reasons, the Board:

**FINDS** that Bell's mandatory vaccination policy and its implementation were generally reasonable until the policy was suspended in June 2022, except in the circumstances set out below and subject to the outstanding issues;

**DISMISSES** grievances 25-712-2021 of Andre George, Bell Canada) and B8284-002-F (by Natacha Duquette – Expertech who complied with the policy;

**FINDS** that unpaid leaves of absence are administrative in nature and reasonable, except in particular circumstances;

**FINDS** that Employers acted unreasonably in placing unvaccinated employees assigned to exclusive remote work on unpaid leave;

**FINDS** that the determination of exclusive remote work must be made on a case-by-case basis;

**UPHOLDS** grievance 6001-2022-0005 of Ifrah Maca, Bell Canada;

**UPHOLDS** grievance 6000-2022-0007 of Julie Lebreux, Bell Canada;

**UPHOLDS** grievance 6003-2022-0013 of Alexandre Gauthier, Bell Canada;

**ANNULS** the administrative measures imposed on these three employees, **ORDERS** the employer concerned to pay lost wages with interest, and to recognize all rights and benefits provided for in the applicable collective agreement;

**FINDS** that Alexandre Gauthier is entitled to compensatory damages for moral prejudice caused by Bell Canada's abusive and unreasonable conduct toward him;

**DISMISSES** the principal allegations challenging the unreasonableness of the mandatory vaccination policy and its application to Martin Poirier, Bell Canada, grievance 82-84-0019-O; Roosevelt Jr Riboul, Bell Canada, grievance 8284-0048-O; Werner Prochnau, Bell Canada, grievance 0098-2022-0162; Thimothé Bessette, Expertech, grievance X-75-019G; Rémi Nantel, Expertech, grievances X8284-26G, X8284-58G; Patrick Dubé-Bourgeault, Expertech, grievances X0745-008G, X0745-018G, Marco Roy, Expertech, grievance X75-009G; Alexandre Martin, Expertech, grievance X8284-030G, Sebastian Rodriguez, Expertech, grievance X8284-036G; Calvin Dutton, BTS, grievance 2022-1996-175; Francis Paquin, Bell Canada, grievance 75-006O; Samuel Cook, BTS, grievance 93-333G; François-Xavier Martel, BTS, grievance 81-2022-0013; Mathieu Labelle, Expertech, grievance X8284-038G, Dustin Neff, BTS, grievance 2022-43-06 but reserves jurisdiction over the outstanding issues identified below, to the extent that they are raised in these grievances;

**DISMISSES** the principal allegations challenging the unreasonableness of the mandatory vaccination policy and its application to Cédric Dansereau, BTS, grievance E-77-382G but **RESERVES JURISDICTION** over his assignment to remote work;

**DISMISSES** the principal allegations challenging the unreasonableness of the mandatory vaccination policy and its application to David Hervé, Bell Canada, grievance 75-003O but **RESERVES JURISDICTION** with respect to natural immunity;

**RESERVES JURISDICTION** to determine whether the 14-day post-vaccination delay and the treatment of requests based on natural immunity are reasonable, on all requests for exemptions under the Canadian Human Rights Act, outstanding issues, damages, quantum, grievances that were not presented and any difficulty arising from the present decision.



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M<sup>e</sup> Francine Lamy, arbitrator  
Member of the Quebec Bar and the Quebec  
Conference of Arbitrators

For the Union:	Me Catherine Massé-Lacoste
For the Bell and Employers:	Mes Maryse Tremblay (for part), Catherine Pronovost (for part), Sixtine Rayon, BLG
Hearing dates:	22 days, ending on July 18, 2025, final representations August 22, 2025.